

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: AUTOMOTIVE WIRE HARNESS  
SYSTEMS ANTITRUST

Master File No. 12-02311

Hon. Marianne O. Battani

**THIS DOCUMENT RELATES TO:**

## ALL ACTIONS

## STATUS CONFERENCE/MOTION HEARINGS

BEFORE THE HONORABLE MARIANNE O. BATTANI  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Wednesday, September 26, 2018

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1      Detroit, Michigan

2      Wednesday, September 26, 2018

3      at about 10:01 a.m.

4                - - -

5                (Court and Counsel present.)

6                THE CASE MANAGER: Please rise.

7                The United States District Court for the Eastern  
8                District of Michigan is now in session, the Honorable  
9                Marianne O. Battani presiding.

10               All persons having business therein, draw near,  
11               give attention, you shall be heard. God save these  
12               United States and this Honorable Court.

13               You may be seated.

14               The Court calls Case No. 12-02311, In Re:  
15               Automotive Parts Antitrust Litigation.

16               THE COURT: Good morning.

17               THE ATTORNEYS: (Collectively) Good morning.

18               THE COURT: Oh, my gosh. We have a standing room  
19               only? Can you move over a little bit here? Let's get  
20               everybody seated so you don't have to stand. I guess this  
21               courtroom might be a little bit smaller than my courtroom --  
22               prettier, but smaller. I think that by our next meeting we  
23               will be back in our usual chambers, not that I don't like  
24               these, but it's kind of hard to be moving around all the  
25               time.

1               Okay. All right. Let us begin, as always, with  
2 the report of Mr. Esshaki. Gene.

3               MASTER ESSHAKI: Thank you very much, Your Honor.

4               I would like to report that since we last met, I  
5 believe we've had an additional six motions that have been  
6 disposed of. I apologize to counsel for having to conduct  
7 them in my offices, but it's much easier than trying to  
8 arrange a courtroom here when construction is going on, and I  
9 think we've accommodated everybody comfortably, and until  
10 such time as the Judge's chambers are restored, we will  
11 continue to do that.

12              There was no motion hearing yesterday because there  
13 were no motions ripe. There is currently one pending motion,  
14 that is the JTEKT motion, which, by agreement of the parties,  
15 will be heard again in my office on October 30th if I'm  
16 remembering correctly.

17              And I would like everyone to know that with that --  
18 that motion is number 92 that I've handled since being  
19 appointed to this case. And recently I've had the unique  
20 opportunity to receive an entire education about the  
21 European Union Secrecy Act -- Privacy Act, and some  
22 well-written reports from some of the Europeans' best minds  
23 on that Act, so it was very fascinating.

24              But otherwise, the motions are coming in and they  
25 are moving along quickly. I don't believe counsel has

1 anything other than that, so --

2 THE COURT: That's it?

3 MASTER ESSHAKI: Yes, Your Honor.

4 THE COURT: Anybody have any questions or comments  
5 for the Master?

6 (No response.)

7 THE COURT: All right. Thank you very much, Gene.  
8 Much appreciated. I don't know anything about the European  
9 Privacy Act.

10 MASTER ESSHAKI: Yes, Your Honor, European Union --

11 THE COURT: But I hope it doesn't interfere with  
12 our United States' litigation.

13 Okay. The next thing -- oh, I know, I wanted to  
14 ask -- no, I wanted to comment. First of all, is it  
15 Randy Weill?

16 MR. WEILL: Randall Weill, yes, Your Honor.

17 THE COURT: Thank you. I appreciate you working on  
18 the agenda and also the status report. Everything looks  
19 great.

20 MR. WEILL: Thank you, Your Honor. I would mention  
21 that it is a collaborative effort that all counsel  
22 participates in.

23 THE COURT: Well, I would thank them individually  
24 but it would take me too long, but I know that you had a hand  
25 in it. Thanks a lot.

1           Okay. As we go through this next part, the status,  
2 I would like for you to tell me a little bit if you have a  
3 situation with the opt-outs. I'm kind of curious as to where  
4 the opt-outs are in the various parts. I know there was some  
5 discussion in one of them about waiting to see what the  
6 payouts might be before they decided to do anything, but,  
7 anyhow, some time has gone by, so if you have opt-outs in  
8 your area, please update me about them.

9           Let's start with the direct purchasers, the status  
10 of settlement and mediation update.

11           MR. KANNER: Good morning, Your Honor.

12           THE COURT: Good morning.

13           MR. KANNER: Steve Kanner, Freed, Kanner,  
14 London & Millen, on behalf of the direct purchaser  
15 plaintiffs.

16           THE COURT: Could you speak right into the  
17 microphone? I understand it is very difficult to hear in --

18           MR. KANNER: I will try again. Is that better?

19           THE COURT: Yes.

20           MR. KANNER: I'm here to talk about the current  
21 status of settlements and mediation, and I thought the  
22 easiest way of doing this and the most efficient way would be  
23 to give you some idea numerically where we are.

24           As of now there are 16 cases where there's at least  
25 one settlement with a defendant. There are seven cases with

1      only one defendant remaining. We have -- out of the various  
2      68 defendant groups, 22 of those cases have been settled.

3                  With respect to what's happened between the last  
4      status conference when I gave a similar report and today, I'm  
5      pleased to advise the Court that we have 18 additional  
6      settlements since our last status conference in June. I can  
7      run through the names, but I think Your Honor is well aware  
8      of them since in the last week or so we've seen a flurry of  
9      preliminary approval orders coming down, for which we  
10     appreciate, and we will be moving ahead on those with due  
11     diligence.

12                With respect to mediations, we've been working both  
13     with Judge Weinstein and with several other mediators to  
14     accomplish the results that are included in those 18  
15     additional settlements. There are other cases which are  
16     pending mediation as we speak. One of -- one or two of those  
17     may not go to mediation because the parties are speaking  
18     directly. And, of course, we are in touch with  
19     Judge Weinstein on a regular basis to let him know what cases  
20     are on top of our list in terms of priorities. And I'm also  
21     here to tell you that at least two of the cases, the  
22     defendants have indicated that they are not willing to  
23     discuss mediation at this point because of the pendency of  
24     motions to dismiss.

25                With that little blip, we recently submitted a list

1      of cases to Judge Weinstein which we believe are ripe for  
2      mediation, and there's discussion back and forth on a fairly  
3      regular basis for scheduling of those.

4                 THE COURT: Okay. As I look at these numbers,  
5      there has to be 30-some cases that have not -- defendant  
6      groups, excuse me, that have not settled. Is that about  
7      right?

8                 MR. KANNER: That's correct, and those are -- many  
9      of those are in the process of discussion right now, and  
10     those preliminary approvals would have to be added to that  
11     group -- or would reduce the number, I should say, from that  
12     group.

13                THE COURT: Could you give me some type of time  
14     frame? I mean, if you were to say that the direct cases are  
15     probably going to be resolved or be ready for trial within  
16     what period of time?

17                MR. KANNER: You know, Your Honor, someone asked me  
18     that question, a colleague, and I said I'm certainly hoping  
19     that we are done before my 18-year-old, who we dropped off to  
20     school at the end of August, my youngest, will be done with  
21     college.

22                THE COURT: Well, I thought you were going to say  
23     was an infant but --

24                MR. KANNER: No, no, been there, done that. The  
25     18-year-old is the youngest.

1           But the reality is, as we move ahead, the pace of  
2 the settlements is picking up, and the pace of discussions  
3 about settlements are picking up, so I'm optimistic it would  
4 be -- I think it would be foolhardy on my part to put a  
5 specific date on it, but I would hope within a couple of  
6 years we could be cleared, that's certainly our intention.

7           THE COURT: I get asked this question all the time.  
8 You still have that case? When is that case going to finish?  
9 And I feel very ignorant in not being able to answer a case  
10 that has been on my docket for so long.

11           MR. KANNER: Well --

12           THE COURT: But since you have the same feeling and  
13 you are the attorney --

14           MR. KANNER: It is even worse with my partners,  
15 they are far more insistent on when we are going to be done  
16 with this series of cases. But, again, the reality is we are  
17 moving -- I think there's a momentum issue involved; as these  
18 cases are aging, there seems to be an increased desire both  
19 on our part and on the various defendants through their  
20 counsel to have rational discussions about resolution.

21           THE COURT: Okay.

22           MR. KANNER: It's my hope that we can continue on  
23 that path, and if it does not, we will certainly advise the  
24 Court.

25           THE COURT: Thank you.

1                   MR. KANNER: Thank you very much.

2                   THE COURT: Next on the agenda is the end payors.

3                   Ms. Salzman.

4                   MS. SALZMAN: Good morning, Your Honor.

5                   Hollis Salzman for the end payors. How are you?

6                   THE COURT: Good.

7                   MS. SALZMAN: On the end payors and the status of  
8                   the settlements, of the 41 cases that we filed with regard to  
9                   the publicly disclosed settlements, 32 cases are fully  
10                  settled. We have an additional five settlements that we have  
11                  agreements in principle; we are working on negotiating the  
12                  language of those settlement agreements, and hope to be able  
13                  to present those to Your Honor for preliminary approval in  
14                  the next month. And if you include those additional five  
15                  settlements, it brings the number of remaining cases to four,  
16                  and remaining defendants to five -- I'm sorry, I got that  
17                  backwards. The remaining defendants are four, and the  
18                  remaining cases are five. One of the defendants is a  
19                  defendant in two cases.

20                  Of those four remaining defendants, we have a  
21                  mediation scheduled in two weeks, and we also have active  
22                  bilateral discussions with another one of the four. With the  
23                  remaining two, they are a little more difficult, but we are  
24                  working through the issues with the mediation team, and we  
25                  are still hopeful at this point that we will be able to

1 resolve them.

2 THE COURT: Okay. Very good. And I neglected to  
3 ask you, Steve, about the opt-outs.

4 MS. SALZMAN: I will go over that briefly.

5 THE COURT: Let me ask you.

6 MS. SALZMAN: So the opt-outs, we have the GEICO  
7 issue that's before Your Honor later today, but other than  
8 that, we have had very few opt outs in our case, maybe one or  
9 two end payors throughout the three -- the three settlement  
10 rounds.

11 THE COURT: Okay.

12 MS. SALZMAN: Okay.

13 THE COURT: Thank you.

14 MS. SALZMAN: You're welcome.

15 THE COURT: Mr. Kanner.

16 MR. KANNER: Judge, to answer your question very  
17 briefly with respect to opt outs in our cases, they are  
18 typically OEMs and occasional entities and tier 2s. Because  
19 we generally have an idea who's opting out, we baked that  
20 into the settlement numbers, and in some cases there is a  
21 built-in, as the Court knows, reduction of the ceiling for  
22 what can be paid. For example, today's --

23 THE COURT: Fiat-Chrysler.

24 MR. KANNER: The Chryslers, the Fords. Ford has  
25 opted out of all of these cases, but we still need to

1 calculate for that. And so with us it has never been an  
2 issue in terms of objections or what have you, that's baked  
3 into the numbers.

4 THE COURT: Okay. Thank you very much.

5 MR. BARRETT: Good morning, Your Honor.

6 Don Barrett for the auto dealers.

7 Your Honor, as you know, we've worked in settlement  
8 discussions as a team with the end payors, and what  
9 Ms. Salzman told you is accurate. I would like to put a  
10 little bit different take on it, and I think it might be  
11 helpful.

12 There were 41 different auto parts cases that were  
13 filed by both the ADPs and the end payors. And 37 of them  
14 have had settlements reached -- settlements in principle, and  
15 they are moving right along, they will be accomplished.  
16 There are just five of the 41 cases that remain, and we just  
17 have four defendants in those five cases, but the five cases  
18 that we have, we each have just one, just one, and I would  
19 like to be a little more specific about that.

20 In the fuel injection system case, there were nine  
21 different defendant families. We've settled with eight of  
22 them. Only Mikuni remains. Mikuni declines to give us their  
23 affected sales information, and without that we are at a loss  
24 as to how to formulate a demand.

25 Valve timing control devices, again, it's Mikuni,

1      and, again, they won't give us any of their sales information  
2      which has been the basic thing that all the settlement  
3      discussions have primarily revolved around. So we are at a  
4      loss as to how to deal with Mikuni.

5                 The exhaust systems case, we've settled with four  
6      of the defendant families. The remaining defendant is Bosal.  
7      We are in discussion with Bosal. We have had a mediation.  
8      We remain far apart, but the mediator is helping us and hope  
9      springs eternal about that.

10               Shock absorbers, the fourth case, and KYB is the  
11      only defendant. There were three, two of them have settled.  
12      We have a mediation set in San Francisco on the 9th of  
13      October, and we are hopeful that that case will be resolved.  
14      That is a substantial case, one of the bigger cases.

15               And then the last case is the automotive steel  
16      tubes. There were three defendants. We've -- there were  
17      four defendants. We've settled with three of them. Sanoh is  
18      the only one left. We are in bilateral settlement  
19      discussions that are proceeding in good faith, and we are  
20      confident that that -- that that should resolve barring some  
21      glitch.

22               As far as the time frame, when we come back up here  
23      in February we -- I mean, there's no reason we shouldn't be  
24      completely done with these. There is just no reason for it.  
25      We are going to have to deal with these glitches, but I

1       assume --

2                  THE COURT: With steel tubes or --

3                  MR. BARRETT: Well, I'm talking about all four of  
4 them.

5                  THE COURT: All four?

6                  MR. BARRETT: All four defendants, there is no  
7 reason on earth we can't settle with those defendants and do  
8 it promptly.

9                  And so as far as opt outs are concerned, the -- the  
10 groups, it's a fairly small group, it's like as far as the  
11 number of cars, it's 1.2 percent or something like that,  
12 they -- they've opted out of the last round as well.

13                  That's it, Your Honor.

14                  THE COURT: Okay. Do you know or hear anything in  
15 terms of the opt-outs, whether they will be filing separate  
16 suits?

17                  MR. BARRETT: No, ma'am, we do not.

18                  THE COURT: Nothing.

19                  MR. BARRETT: We do not. They may be -- they may  
20 be reaching some private settlement, but we haven't heard, we  
21 don't know.

22                  THE COURT: Okay.

23                  MR. BARRETT: Thank you.

24                  THE COURT: The other thing I wanted to ask you is,  
25 you indicated that -- is it Mikuni in the fuel injection,

1      that remains. You are not getting some information from  
2      them?

3            MR. BARRETT: We are not getting -- all of these  
4      cases mainly settle on the basis of affected sales; you know,  
5      how much did, you know, on the -- how much commerce was  
6      there; was it \$100 million worth or was it \$2 million worth?  
7      And that information has to come from the defendants. If we  
8      are going to do it before full discovery we can -- you know,  
9      we can ramp up and do that but we can't, of course, make them  
10     tell us, but they have declined to do it, and we don't know  
11     why and -- but that's where we are.

12           THE COURT: You will use the services of  
13     Mr. Esshaki, if need be, for a hearing on that.

14           MR. BARRETT: We have not filed a motion; that may  
15     be the next thing to do.

16           THE COURT: Okay.

17           MR. BARRETT: Thank you.

18           THE COURT: Thank you. Is this truck and equipment  
19     or are you --

20           MR. SIBARIUM: No, just a brief word.

21     Mike Sibarium for Mikuni.

22           We have provided, I think, two out of essentially  
23     six figures that they wanted. There were no sales of valve  
24     timing control devices in the United States, no direct sales  
25     into the United States from abroad, and no sales at all by

1      the U.S. subsidiary. We are working on the figures for fuel  
2      injection systems.

3                THE COURT: For what?

4                MR. SIBARIUM: For fuel injection systems, we are  
5      working on those figures. We are, I think, the only  
6      defendant in this entire MDL that not only has closing  
7      letters from the DOJ but closing letters from the EU as well.  
8      We never had to calculate volume of commerce sales for either  
9      of these for any governmental entity. We had no plea  
10     anywhere in the world. So it's just taking a little longer,  
11     but we are working on it.

12               THE COURT: Okay. Glad you are working on it.

13     Thank you.

14               Good morning.

15               MR. PARKS: Good morning. Manly Parks for the  
16     truck and equipment dealer plaintiffs.

17               We are at the point of we have a series of four  
18     settlements that are scheduled for final approval hearing  
19     this afternoon, as Your Honor is aware. Aside from those  
20     settlements, we will be -- we will have no other matters  
21     pending in this proceeding with the exception of the claim in  
22     occupant safety systems against Takata which, as Your Honor  
23     is aware, is in bankruptcy. I am happy to report that we  
24     have actually reached an agreement in principle with Takata  
25     regarding that claim as well, as of yesterday, so that will

1      take some time to document and go through the various -- it's  
2      conditional upon approval by a trust and the bankruptcy court  
3      and a bunch of other things, and ultimately we will have to  
4      bring it to this Court for approval in a class setting, as I  
5      understand, but there -- there is an agreement in principle,  
6      and assuming that we can get that put to bed the way we want  
7      to, then we will be complete in all of our claims and  
8      proceedings in this MDL.

9                THE COURT: So at that point you will be ready to  
10     be -- I mean, you will be done and you will be ready for  
11     distribution?

12              MR. PARKS: Yes, absolutely. We are -- we are  
13     hopeful that we can move that process along so that we can  
14     begin distribution. We have a number of -- we have a system  
15     in place for distribution. We have a portal developed for --  
16     that can go live on our website for the claims process.  
17     We've gone pretty far down that road, but we did not want to  
18     incur the additional administrative expenses of multiple  
19     levels of distribution --

20              THE COURT: Right.

21              MR. PARKS: -- particularly given that the  
22     magnitude of our settlements is at a different order than  
23     say, for example, the end payors or auto dealers. So we  
24     don't have any additional -- it would represent too much of a  
25     cost of the overall settlement pool, in our assessment, to

1 try to do that multiple times and incur layers of  
2 administrative expenses.

3 THE COURT: It makes a lot of sense to do it one  
4 time, and it sounds like you have things in order, so as soon  
5 as you are ready, which will be soon --

6 MR. PARKS: Yes, correct. And we have no opt outs  
7 in any of our settlements.

8 THE COURT: Thank you.

9 MR. PARKS: Thank you.

10 MR. REISS: Good morning, Your Honor. Will Reiss  
11 for the end payor plaintiffs, and I'm going to be speaking on  
12 behalf of the auto dealer plaintiffs as well.

13 THE COURT: Okay.

14 MR. REISS: Just to update you on the status of our  
15 26F conferences and our discovery plans.

16 As you heard before, most of our cases are settled,  
17 and we have settlements in principle. So there are only very  
18 few cases in which we have been negotiating the schedules.

19 The good news is in the fuel injection systems,  
20 this is the case in which Mikuni is a defendant. We have  
21 submitted a discovery schedule. Obviously hopefully we get  
22 the transactional data from them sooner, but the schedule  
23 obligates them to produce transactional data early next year,  
24 so at a minimum we'll be getting it then if not sooner  
25 hopefully.

1           Valve timing control devices is also a case in  
2 which Mikuni is a defendant. We are going to be negotiating  
3 that. That's going to be substantially similar to the fuel  
4 injection systems. We hope that will be submitted within the  
5 next week or two.

6           Exhaust systems, we have not submitted a discovery  
7 plan. We just recently yesterday filed a motion to amend,  
8 that is a case in which Bosal is the sole remaining  
9 defendant. And our motion to amend seeks leave to name  
10 several additional Bosal entities; so until that motion  
11 shakes out, we are not going to be submitting a discovery  
12 plan, but we hope that will be resolved soon.

13           And then the only really other case of note is the  
14 shock absorbers case, and that's a case in which we have a  
15 discovery plan that has been submitted. And I think Your  
16 Honor is aware we've had some motion practice on that, and  
17 the Special Master ruled that our discovery plan was  
18 operative. KYB has moved to shorten the plan, and KYB has  
19 filed an objection to the Special Master's decision.

20           We just very recently submitted an order which we  
21 think is appropriate. It follows the decision which you just  
22 recently reached with respect to KYB's expedited motion, and  
23 it's just awaiting entry.

24           THE COURT: Okay. Good.

25           MR. REISS: Thank you, Your Honor.

1                   THE COURT: Thank you very much, Mr. Reiss.

2                   MR. LOVE: Briefly, Your Honor. Bradley Love from  
3 Barnes & Thornburg. I represent the KYB defendants.

4                   I just wanted to note regarding the order that  
5 Mr. Reiss mentioned, we received that at 1:00 a.m. this  
6 morning. I think it was --

7                   THE COURT: Electronic filing.

8                   MR. LOVE: I know. I think it was filed sometime  
9 yesterday, but they waited to send that to us, so we are  
10 reviewing it. And I think we plan to submit a proposed  
11 amended order to address the changes in our objections since  
12 the discovery plan was entered in May of this year.

13                  Some minor things to note. We've already produced  
14 all the transactional data in the case and met that deadline,  
15 complied with all the plaintiffs' requests. There's just  
16 some issues with the custodial documents. And as you are  
17 aware, we would like to also get a date certain for  
18 plaintiffs to complete any downstream discovery and fully  
19 respond to KYB's pending summary judgment motion on  
20 passthrough.

21                  THE COURT: Okay. Thank you.

22                  MR. CALDES: Good morning, Your Honor. Bill Caldes  
23 on behalf of the direct purchaser plaintiffs.

24                  In regards to the scheduling orders, excluding  
25 motions -- pending motions to dismiss, cases with arbitration

1 issues, or where we are still in the process of performing  
2 services. There's only one case that's outstanding that  
3 needs a scheduling order, and that is air conditioning  
4 systems. We are currently exchanging drafts with defense  
5 counsel, so we hopefully will have that completed relatively  
6 shortly.

7 THE COURT: Okay. That's the only case without  
8 one?

9 MR. CALDES: Yes, Your Honor.

10 THE COURT: Good. All right. Thank you.

11 MR. CALDES: Thank you.

12 THE COURT: Ah, out of the jury box.

13 MR. SEEBALD: Your Honor, Craig Seebald for the  
14 Hitachi Automotive Systems defendants.

15 Just a minor point related to our settlements with  
16 the direct purchasers in the fuel injection system case. We  
17 had settled that case with the then plaintiff Irving Levine  
18 on -- earlier this week you approved our settlement in the  
19 Irving Levine case, and I think on the same day you also  
20 approved a motion that allowed the plaintiffs to substitute  
21 Irving Levine in for VITEC, so now VITEC is the plaintiff,  
22 but our settlement agreement is with Irving Levine.

23 So I just want to let you know we will be filing  
24 some type of stipulation with the direct purchasers. We have  
25 already been in contact with them, to allow us to amend our

1 settlement agreement so it is with VITEC, the now viable  
2 plaintiff, rather than Irving Lavine, which is no longer the  
3 plaintiff in the case. So hopefully by the end of the week,  
4 you will have something from us to allow us to do that, but  
5 under our settlement agreement we need the Court's approval  
6 to amend our settlement agreement.

7 THE COURT: Okay. You can amend, and we will see  
8 what happens when you do the amended pleading. There should  
9 be no problem, right?

10 MR. SEEBALD: Yes, I agree. Thank you.

11 MR. KANNER: Your Honor, I agree, it should not be  
12 an issue.

13 THE COURT: Okay. Good. Thank you. Anyone else  
14 on the status?

15 (No response.)

16 THE COURT: All right. I am pleased with the fact  
17 that things are moving along. They seem to be moving along  
18 on a little more rapid pace as has been said. Of course, the  
19 Court is always interested in what it can do, if anything, to  
20 move it along. I know one thing we can do better is to get  
21 our motions out more quickly, and I know that some of them  
22 are longer than at least I like, and we are working on it to  
23 push them out. It is just that we are overwhelmed with -- we  
24 are overwhelmed with paper, just trying to sort through it to  
25 get to all of these motions.

1           But I appreciate particularly, and I want to say  
2 that on the status report that there is that listing so  
3 everybody knows what motions are outstanding because  
4 obviously it would be difficult to go through the internet to  
5 CM/ECF to determine that unless you are on a particular case.  
6 So you all know and I want you to review very carefully  
7 the -- that report because I know many of you worked on it,  
8 but, please, review it carefully because if you have anything  
9 else that's outstanding...

10           There are some perfunctory motions, I know,  
11 substitution of counsel, miscellaneous things like that, that  
12 just need data entry that we are working on. But in terms of  
13 any substantive motion, if you don't see it on the list and  
14 you have filed it, please call us. All right. Don't be one  
15 of these well, we don't want to remind her because she might  
16 rule against me, because that's -- I mean, that will not  
17 happen, but I do need to know in case there's any problem.

18           So far we seem to have done very well, but every  
19 once in a while there will be a glitch in CM/ECF where  
20 something doesn't get into the right spot and causes a  
21 problem. So I am really depending on you to let me know if  
22 you have outstanding motions that are not listed.

23           Okay. Our next status conference is February 6th.  
24 It will be a nice, sunny day with no snow.

25           And then we need a date for the next conference. I

1      was looking at the calendar, and June 5th looks good. I  
2      don't know -- does anybody know of a conflict with June 5th,  
3      2019?

4                (No response.)

5                THE COURT: I know right now you're probably free  
6      that day. Okay. We will set the next conference for  
7      June 5th, 2019.

8                Is there anything else before we get to the motion  
9      hearings?

10              MR. WEILL: Thank you, Your Honor. Randall Weill  
11      again.

12              I would like to raise an issue relating to the  
13      production of Department of Justice documents that were  
14      produced by guilty plea defendants. Just by way of  
15      background, if you recall, the direct purchasers asked last  
16      winter if the Court would supplement its original order from  
17      October of 2017 to add a number of cases that were not in  
18      that order especially because the direct purchasers had not  
19      at that time had cases pending.

20              The Court entered that order on May 31, and it  
21      directed that the guilty plea defendants in those listed  
22      cases produce to each separate plaintiff group within 90 days  
23      of the entry of the order, the documents that were produced  
24      in all cases that were pending, non-settled and not otherwise  
25      stayed.

1           And I am -- the direct purchasers have had  
2 discussions with various of these defendants, and one of the  
3 groups involving the auto -- the anti-vibration rubber  
4 product defendants, and those are Yamashita, Toyo Rubber,  
5 Toyo Tire and Bridgestone, did not produce documents within  
6 90 days. The 90-day date fell on August 29th of this year.

7           So I wrote a letter to those guilty plea defendants  
8 and asked that they produce those documents on -- by  
9 September 14th, or that we would take it up with the Court.  
10 I got a response that is identical in content from each of  
11 the defendants that said, in substance, the defendants on  
12 April 13th, 2018, in the AVR P case, filed a 1292(b) motion  
13 seeking interlocutory appeal of the Court's denial of their  
14 motion to dismiss the direct purchaser complaint. In that  
15 motion, defendants requested that the Court stay discovery  
16 pending disposition by the Sixth Circuit. Therefore, our  
17 position is that no discovery of the DOJ productions or  
18 otherwise should proceed while the 1292(b) motion remains  
19 sub judicial.

20           So we are apparently at an impasse. The direct  
21 purchasers believe that the documents are readily available  
22 since they've been collected, they've been reviewed, and  
23 they've been produced to the Department of Justice. And we  
24 would ask that the -- the Court give us direction about how  
25 we proceed given the Court's prior order and this response

1 from the AVRP defendants.

2 And that's our situation. I would be happy to have  
3 the AVRP defendants address those questions.

4 MR. REISS: Thank you, Your Honor. Steve Reiss for  
5 the Bridgestone defendants, and I believe I speak for the  
6 other two AVRPs defendants that are involved.

7 As Mr. Weill said, I mean, he was quite, I think,  
8 open in the situation; we filed a 1292(b) motion with the  
9 Court on April 13th. I think the motion was fully briefed by  
10 May 21st, and it's still pending. As part of that motion, we  
11 asked for a stay of all discovery because I think Your  
12 Honor -- I know Your Honor has been inundated with motions  
13 and papers, but that motion basically says there is no  
14 jurisdiction in this Court. We've challenged the basic  
15 bona fide plaintiffs. We think there are very substantial  
16 grounds for 1292(b).

17 And our position is simply that while that motion  
18 is pending, including a request for a stay of discovery, we  
19 should not engage in any discovery because our basic position  
20 is the Court has no jurisdiction over that case. We are  
21 awaiting a ruling on the 1292(b). In fact --

22 THE COURT: Can I ask you a question because I'm  
23 not --

24 MR. REISS: Sure, sure.

25 THE COURT: -- really familiar with the

1      interlocutory appeal, I haven't had very many of them. How  
2      long do they take? Are they within the normal course of an  
3      appeal?

4                    MR. REISS: Your Honor, the procedure first is we  
5      request that the District Court certify the case for  
6      interlocutory appeal, and that's been fully briefed. If the  
7      District Court grants that motion, the Sixth Circuit still  
8      has to accept the case. So there has been a round of  
9      briefing which is rather expedited to the Sixth Circuit that  
10     says you should take this case. If they take the case, then  
11     the case is typically on the normal appellate court briefing  
12     schedule. So -- so that will take a bit of time, Your Honor.

13                  THE COURT: No. Wait a minute. Is the status that  
14     they are waiting to see if they will take the case, or they  
15     have taken the case and now --

16                  MR. REISS: Well, first we need the order from this  
17     Court. If the Court -- if this Court grants the 1292(b), we  
18     then have to file papers with the Sixth Circuit asking that  
19     they accept the case. Frankly, most of the time if the  
20     District Court grants the motion, they will. And I have a  
21     fair degree of confidence that we -- on the merits of this  
22     case, they will take the 1292(b). How long the Sixth Circuit  
23     takes to decide that? Usually they are -- the appellate  
24     courts are pretty quick about that. But if they take the  
25     case, then typically there is the normal appellate briefing

1      schedule in the Sixth Circuit.

2                And as I said, we -- you know, this motion actually  
3      had been up for argument before the Court in May and it was  
4      taken off the argument schedule. It actually was placed on  
5      the schedule again, and it was taken off the schedule for  
6      this status conference. So we honestly believe that until  
7      the motion is decided, including its request for a stay, as  
8      Mr. Weill points out, the Court's order asks for the  
9      production except for matters that were stayed.

10              THE COURT: And did you ask for oral argument on  
11      it?

12              MR. REISS: We did, Your Honor, we have asked  
13      twice, and so far the Court has taken it off twice. We are  
14      happy to argue it now, you know, but I think the Court has a  
15      schedule and --

16              THE COURT: Are you ready to argue it now?

17              MR. WEILL: Not competently, Your Honor, no.

18              MR. REISS: Well, I think we should go ahead, Your  
19      Honor.

20              THE COURT: We wouldn't want any incompetence in  
21      this courtroom, not at these hourly rates. Okay. Molly.

22              (An off-the-record discussion was held at  
23      10:39 a.m.)

24              THE COURT: All right. Molly reminds me that we  
25      have heard extensive argument before.

1                   MR. REISS: We did argue the motion to dismiss,  
2 Your Honor.

3                   THE COURT: And, you know, I think we will do it on  
4 the briefs, and we will submit that -- to have that up next,  
5 so you will get that soon.

6                   MR. REISS: Thank you, Your Honor.

7                   THE COURT: Okay.

8                   MR. WEILL: Does that mean, Your Honor, that we  
9 should await your decision before we --

10                  THE COURT: Yes, you should. We will include in  
11 the motion whether or not we stay the production, okay -- or  
12 stay anything pending the Court of Appeals.

13                  MR. WEILL: Thank you very much, Your Honor.

14                  MR. REISS: Thank you, Your Honor.

15                  THE COURT: Thank you. Anything else before we get  
16 to motions?

17                  (No response.)

18                  THE COURT: Okay. GEICO. What's going on with  
19 GEICO? I read and -- oh, you are leaving? Thank you,  
20 Mr. Esshaki.

21                  (Special Master Esshaki was excused at 10:40 a.m.)

22                  THE COURT: We read and read and got to the last  
23 pleading and see that there's some agreement, so --

24                  MR. RUBIN: Your Honor, Mike Rubin for the  
25 Yamashita defendants in the AVRPs case, speaking on behalf of

1      the Round 3 GEICO defendants.

2           So your question is exactly right, Your Honor, why  
3      are we here? We are here really in an effort to achieve  
4      clarity as to who is in and who is not in the settlement  
5      classes.

6           GEICO's exclusion request, as we laid out, did not  
7      comply with the Court's notice requirements to identify  
8      GEICO's purchases, which is the reason there is a lack of  
9      clarity as to what purchases and by whom GEICO was seeking to  
10     opt out.

11          Coupled with that was the Round 1 briefing in which  
12     GEICO said, it's virtually verbatim, exclusion request  
13     excluded not only GEICO's purchases but also purchases by  
14     other class members who were insured by GEICO, with GEICO  
15     arguing that as a subrogee GEICO was standing in their shoes  
16     to assert claims for purposes when GEICO reimbursed its  
17     insureds and other third-party claimants for their purchases  
18     of auto parts.

19          GEICO specifically argued that in part the  
20     defendants couldn't challenge GEICO's right to bring those  
21     claims because GEICO was listed as an opt out in the final  
22     judgments, and the defendants in Round 1 had not objected to  
23     GEICO being listed as an opt out.

24          So where are we after all of this briefing? Well,  
25     GEICO now says it didn't seek and was not seeking and has not

1      sought to opt out any other class members. That its current  
2      complaint --

3                THE COURT: Is this in Round 3 only or 1, 2 and  
4                3?

5                MR. RUBIN: Round 3 only, Your Honor. And it says  
6      that its complaint does not -- is not based upon and is not  
7      asserting any subrogation claims or subrogation rights or  
8      other rights derivative of those of class members that have  
9      not opted out. And that with respect to its insurance  
10     payment claims, GEICO says emphatically that it's only  
11     bringing its own claims if it has any, and it's not bringing  
12     claims of class members who didn't opt out, and that GEICO is  
13     not seeking to stand in the shoes of its class members.

14               And if that's where things ended, Your Honor, we  
15     would have probably reached stipulation and withdrawn our  
16     papers, and we could have moved on. The issue, Your Honor,  
17     is that GEICO then dropped footnotes in the briefs. It's  
18     footnote 21 in the opposition brief to our motion.

19               THE COURT: I don't like footnotes.

20               MR. RUBIN: Understood. I --

21               THE COURT: I don't like to read them.

22               MR. RUBIN: And it is footnote 8 in their reply  
23     brief to their motion to reply in which the footnote -- the  
24     first one says, "If it's found that GEICO cannot recover for  
25     its direct injuries caused by defendants' unlawful conduct,

1      GEICO also has subrogation rights."

2                And then it says in the second footnote, "Although  
3      GEICO premises its claims on its direct injury in paying for  
4      auto parts, which are not derivative of its insureds, GEICO's  
5      subrogation rights when it had made payments to insureds or  
6      claimants remain intact."

7                So it's unclear exactly what those footnotes mean  
8      and what GEICO intends by them, but what we think they are  
9      saying is that they are not bringing the claims that the  
10     defendants are concerned about on behalf of non-opt out class  
11     members, but they might in the future do so.

12               So where are we in terms of at -- in our reply  
13     brief? Based on GEICO's representations of what its  
14     exclusion request is doing, if that exclusion request were  
15     granted, that it would not be seeking to exclude any other  
16     entity or person other than GEICO and its affiliates, the  
17     defendants no longer object to GEICO's failure to comply with  
18     the Court's notice requirements, namely identifying which  
19     purchases they made, which vehicles, which parts.

20               Of course, it is ultimately up to the Court to  
21     decide whether or not to accept the GEICO's opt out as  
22     effective and valid, but for the defendants we no longer  
23     object to it because of the clarification as to its scope.

24               As to the broader issues of the other claims that  
25     GEICO is bringing and the footnotes about subrogation, they

1      are saying they are not bringing subrogation claims. They  
2      obviously have to amend their complaint to comply with the  
3      Round 1 court order separating them into parts, but until  
4      GEICO does something in line with their footnotes, there's  
5      really nothing ripe for the Court to decide. The Court  
6      always in approving the settlements retains jurisdiction to  
7      enforce the settlements.

8               So where we think the Court should proceed from  
9      here, as we said in our papers, and as the end payors have  
10     also said, is the Court should enter the proposed final  
11     approval orders as they have been submitted by the settlement  
12     class counsel, along with the proposed final judgments which  
13     generally retain jurisdiction over the settlement agreements  
14     and to enforce the settlement agreements.

15              And to further resolve these issues and make sure  
16     the record is clear, the Court should specifically state that  
17     only GEICO, its expressly identified affiliates, and then the  
18     one individual opt out, Mr. Terry -- I'm not going to  
19     pronounce the last name right -- Sershion.

20              THE COURT REPORTER: Would you spell that?

21              MR. RUBIN: S-E-R-S-H-I-O-N. They are excluded  
22     from the settlement class, no other class members are  
23     excluded. And then what the defendants would request is that  
24     the Court, in addition to, and without limiting, or quite  
25     frankly consistent with its general retention of

1 jurisdiction, state that to the extent that any party or a  
2 person or an entity attempts in the future to assert claims  
3 of class members that haven't opted out, claims derivative of  
4 other class members that haven't opted out, or that any party  
5 contends may be pursued -- may not be pursued in the absences  
6 of an opt out, but the Court retains jurisdiction to address  
7 those in the future and resolve any disputes.

8 And with that I think the settlements can be  
9 approved, the final judgments may be entered, and GEICO can  
10 proceed with its underlying cases consistent with presumably  
11 Round 1 -- the Round 1 order, and we will see what GEICO  
12 actually does -- what arguments they actually make and what  
13 claims they actually assert. And if we need to, the Court  
14 has retained jurisdiction, so we can come back and address  
15 the issues concretely and not sort of speculating about what  
16 they may or may not do in the future.

17 THE COURT: Don't you -- or maybe in your proposed  
18 order you have that second provision about retaining  
19 jurisdiction? I mean, do we need to have something separate?  
20 The Court retains jurisdiction.

21 MR. RUBIN: We don't necessarily, but for clarity  
22 and just -- you were suggesting that language. As long as  
23 it's understood, Your Honor, that the Court continues to  
24 retain jurisdiction and that the defendants may, if GEICO  
25 does go beyond what they say, if they try to revert back and

1 bring subrogation claims or assert claims that are really  
2 class members, or they argue they are standing in the shoes  
3 of the class members that didn't opt out, the proper place  
4 procedurally is to come back to the class action because  
5 that's where the Court has exclusive jurisdiction. It is not  
6 a motion to dismiss in the GEICO case; it is not a summary  
7 judgment motion in the GEICO case which have limitations on  
8 what the Court can do in terms of resolving facts. It's  
9 coming to enforce the Court's injunction in the final  
10 judgment and doing that in front of the settlement court.  
11 Obviously, Your Honor, you are the same person, but as a  
12 procedural matter, it would be brought in the docket for the  
13 class actions. So that's why we wanted to clarify that so  
14 the parties know, but if that's -- it is not technically  
15 required for retaining jurisdiction.

16 THE COURT: I don't mind any clarification if you  
17 feel more comfortable with it, but let's see what GEICO has  
18 to say about this before we resolve it.

19 MR. RUBIN: Thank you.

20 MR. GOLDFINE: Well, I agree with -- first, may I  
21 have leave of the Court to make a special appearance, since  
22 we are not parties in this MDL on our case, that was our  
23 motion to intervene. Dan Goldfine on behalf of the law firm  
24 of Lewis Roca, on behalf of GEICO, except for the Toyo  
25 defendants. Ms. Cassell is here on behalf of GEICO as to the

1 Toyo defendants.

2 THE COURT: Are you admitted? Is this --

3 MR. GOLDFINE: I'm admitted in a different case,  
4 but this case is not part of the MDL, and that's why we filed  
5 a motion to intervene here to appear.

6 THE COURT: Okay. Can I have the spelling of your  
7 last name?

8 MR. GOLDFINE: G-O-L-D-F-I-N-E.

9 THE COURT: F-I-N-E. Okay. You may proceed.

10 MR. GOLDFINE: Thank you. I agree with Mr. Rubin  
11 that whatever their motion was seeking over and above the  
12 technical complaints was material that doesn't belong here  
13 and is not ripe. Any conditions in his proposed order which  
14 was filed in the reply -- buried in the reply for which we  
15 didn't get to respond to are conditions that are wishful  
16 thinking on the part of the defendants.

17 Our claims, as we've briefed for you in the first  
18 wave of cases, we believe are direct and they belong to GEICO  
19 directly. GEICO pays for the parts in the insureds' -- I  
20 mean, we went through this presentation, there are four  
21 different buckets, but the one he's talking about is we paid  
22 for the parts. We don't believe that that is derivative as  
23 we have alleged it.

24 However, if the Court concludes, which it didn't in  
25 the original motion to dismiss, that they are not direct, we

1     would have subrogation rights per contract and per common law  
2     that would allow us to pursue those claims.

3                 THE COURT: Did you read the opinion in GEICO?

4                 MR. GOLDFINE: I did read the opinion in the GEICO  
5     case.

6                 THE COURT: It seems like the only thing you have  
7     left is your own fleet claims.

8                 MR. GOLDFINE: On the antitrust claims, Your Honor,  
9     but the unjust enrichment claims and state consumer  
10    protection claims remain, and we are going to pursue that.  
11    And to be candid, we are going to replead the antitrust  
12    claims. We think with all due respect, Your Honor, you are  
13    mistaken on the antitrust standing issue, but we are going to  
14    replead them according to the structure you asked us to  
15    replead them; we are going to do that. You may continue to  
16    dismiss them, and we will preserve that for appeal.

17                 But the -- you preserved the other buckets of  
18    claims, the unjust enrichment and the consumer protection  
19    claims, as well as the fleet claims on the antitrust -- all  
20    three buckets as to the fleet claims.

21                 So I agree with Mr. Rubin that this motion is no  
22    longer ripe, it wasn't ripe to begin with. They are really  
23    challenging whether we have stated a claim, and that is  
24    properly done in the other case on a Rule 12 motion as  
25    opposed to this abbreviated proposition as to whether we can

1 state a claim under a direct theory or on a subrogation  
2 theory.

3 So, you know, our opt out notice and our 226-page  
4 complaint contemporaneously filed gave them sufficient  
5 notice, which is what the case law requires, as to what we  
6 were claiming. It laid out in detail as to each of the  
7 conspiracies -- frankly more detail than the first and second  
8 wave of complaints that we had filed in the case because we  
9 have learned more as this has gone along, and it lays out  
10 exactly what we are claiming which is primarily that we  
11 suffer because we had to pay more.

12 I mean, the easy example is when -- for an example,  
13 an insured doesn't have to replace the part, a bumper cover,  
14 for example. They don't have to replace it; we still have to  
15 pay more for that bumper cover, and that claim still exists.  
16 It's not derivative of the insured, and is a direct claim as  
17 a result of the wrongful conduct that the defendants engaged  
18 in.

19 The defendants may be able to prove at trial that  
20 their wrongful conduct didn't cause us to pay more or --  
21 and/or disprove all our elements, or, as you pointed out in  
22 your opinion, they may be able to prove their affirmative  
23 defense of release, but that's why we are here. Had they not  
24 tried to release our claims in the settlements, we would not  
25 be -- you know, I suspect we would have been in the class and

1      trying to recover as part of the class. It was clear that we  
2      were end payors for these parts.

3            I'm happy to address any questions, but given the  
4      position that the defendants think that their motion is not  
5      ripe or is now moot, I don't want to belabor the Court's  
6      time.

7            THE COURT: Okay. Thank you. Counsel.

8            MR. RUBIN: Your Honor, the caveat of they may come  
9      back with subrogation claims if what they are bringing now  
10     doesn't work for them, that's where we would then come back  
11     to the Court and raise our argument about those claims and  
12     why those are not claims that they can bring. Those are  
13     claims of class members that didn't opt out. Again, that's  
14     not ripe because they are not asserting that now, but if they  
15     do, we will be back.

16            THE COURT: So there is nothing -- we need to enter  
17     the order though still --

18            MR. RUBIN: Yes.

19            THE COURT: -- of the Round 3 --

20            MR. RUBIN: Right. I believe, Your Honor, what's  
21     pending right now is the proposed final approval order. You  
22     orally approved the settlement at the fairness hearing in  
23     August, then final judgments for each of the defendants, and  
24     then an order reflecting resolution of these issues.

25            THE COURT: Right. Do you have any objections to

1       the order as proposed?

2                   MR. GOLDFINE: Okay. Let me just take it  
3 separately.

4                   THE COURT: Come to the microphone.

5                   MR. GOLDFINE: I apologize. As to the order on the  
6 opt out issue, we object to the additional language which was  
7 meant to prejudge what's going on here. You know, they have  
8 admitted it is not ripe or it is moot, that that should be  
9 the grounds for the order. We will be happy to do a proposed  
10 order. I'm sure we can come to an agreement on just no  
11 additional language as it's laid out in the reply brief.  
12 They didn't attach a proposed order to their initial brief.

13                  As to the other issues, if they -- if we're out of  
14 the case, if our opt out is permitted to stand, as you -- as  
15 I recall, I'm sure you don't recall, we discussed -- we  
16 can't -- at the motion to dismiss, we cannot object and opt  
17 out. We are opting out so --

18                  THE COURT: And I have no problem with you opting  
19 out. I would rather -- really, I read all of your briefs,  
20 but I think the fairest thing is to allow you to opt out. I  
21 think they had notice of you -- of you opting out, so that's  
22 not a problem, and I will allow you to opt out. You filed  
23 your complaint.

24                  I do have a problem with the 400-some paragraphs.  
25 Could you have done it more concise? I couldn't even read

1       it. I mean, once you get to 100, it's pretty boring.

2           MR. GOLDFINE: My kids will get a kick out of that,  
3 Your Honor.

4           You've asked us to now split them up. In total  
5 there will be a lot more paragraphs, but by part or part  
6 group, they will be shorter. You know, we were facing what  
7 evidence we had and tried to present it, and there's just a  
8 lot of parts, as you know, as we've discussed at length.

9           THE COURT: I know.

10          MR. GOLDFINE: So we are cognizant of your  
11 concerns, and we will try to be more cognizant of the notice  
12 pleadings. Of course, in our shoes, you know, we've got in  
13 this room alone 100 lawyers who are ready to file motions to  
14 dismiss challenging the adequacy of our complaint, so we want  
15 to make sure we nip that in the bud as well.

16          THE COURT: How long do you think it will take to  
17 file your complaints?

18          MR. GOLDFINE: The new complaints?

19          THE COURT: The separate complaints.

20          MR. GOLDFINE: My team, including Ms. Hazel here  
21 from our office, would like us to have at least two months,  
22 and that's what our plan is. We discussed that with some of  
23 the defendants, I didn't get any objections to the two-month  
24 period of time. And what we are going to end up doing -- we  
25 have some issues because we've got different case numbers and

1 different statute of limitation issues that -- I don't want  
2 to create a gap that I have to relitigate when I re-add this,  
3 so we are going to try to figure through those issues. I  
4 didn't get the sense from the defendants that they were going  
5 to fight us tooth and nail in trying to create gaps out  
6 there, but hopefully we can work through all of those issues  
7 as part of the motion to amend that was previously filed,  
8 adding the complaints. I think they were all in that first  
9 case including the second wave and third wave.

10           I do want to just come back. The proposed order  
11 that's in the body of their reply, we don't agree with. We  
12 think it should just be -- the motion -- the motion on the  
13 opt-outs should be denied.

14           THE COURT REPORTER: I'm sorry.

15           MR. GOLDFINE: It should be denied, which is fine.  
16 It doesn't have to have an explanation.

17           THE COURT: Okay.

18           MR. GOLDFINE: Thank you, Your Honor.

19           THE COURT: Anything else?

20           MR. RUBIN: I don't think so.

21           THE COURT: Okay. Thank you. Ms. Salzman.

22           MS. SALZMAN: Hollis Salzman.

23           I don't know if we are moving to the next motion  
24 here or not, given what was just resolved, but the end payors  
25 submitted final judgments to Your Honor that carved out this

1 issue on GEICO, and we're asking the Court to please enter  
2 those final judgments so we can get the class settlements  
3 finalized. We do not think and I'm not sure that GEICO is  
4 even pushing it, that GEICO should be permitted to intervene  
5 in our case. At this juncture it's not appropriate and --

6 THE COURT: They are not going to intervene, the  
7 Court is allowing them to opt out.

8 MS. SALZMAN: I just wanted to make sure. Thank  
9 you.

10 THE COURT: And the Court will enter the final  
11 judgment.

12 MR. RUBIN: Thank you, Your Honor.

13 MS. STORK: Thank you, Your Honor.

14 THE COURT: Okay. That takes care of one and two.  
15 We have the TED motion.

16 THE LAW CLERK: It's set for 1:00.

17 THE COURT: I wonder if we could move it up. There  
18 are no objections. Is anybody here for the TED's motion for  
19 final approval?

20 (No response.)

21 THE COURT: No. There were no objectors. Okay.

22 MR. PARKS: Your Honor, Manly Parks for the truck  
23 and equipment dealers.

24 We are not aware of any objections or opt outs.

25 THE COURT: Do you want to put your settlement on

1       the record then?

2                   MR. PARKS: I would be happy to do that right now,  
3 Your Honor.

4                   THE COURT: Okay. Let's do that.

5                   MR. PARKS: Great.

6                   THE COURT: All right.

7                   MR. PARKS: Good morning, Your Honor. I'm here  
8 with my colleague, Kevin Potere, from our New York office --

9                   THE COURT: And Mr. Tallerico is sitting here.

10                  MR. PARKS: -- who handled the briefing for this,  
11 and I wanted to give him credit for doing a nice job with  
12 that. I'm going to handle the argument because he's not  
13 admitted to this court, otherwise he would be here for us.

14                  The motion for final approval that is before the  
15 Court covers four settlements in the radiators, starters and  
16 alternators cases. These settlements would yield cash  
17 proceeds in excess of \$3.1 million. If approved, these  
18 settlements would resolve the last of the truck and equipment  
19 dealer cases pending in this action, aside from the Takata  
20 claims in the occupant safety systems matter, which are tied  
21 up with the bankruptcy proceeding.

22                  This particular motion involves settlements with  
23 the T.RAD defendants, Hitachi Automotive Systems on behalf of  
24 some other Hitachi entities, the MITSUBA defendants and the  
25 Bosch defendants.

1           As set forth in our moving papers, we believe that  
2 each of the settlements is meaningful, substantial, fair,  
3 reasonable and adequate. On that basis we believe that final  
4 approval should be granted.

5           The amount of each settlement was a function of  
6 several factors including evidence of defendants' misconduct  
7 and the volume of commerce potentially affected. The volume  
8 of commerce information, because we were in the pre-discovery  
9 phase, was obtained through, in many cases, a mediation or  
10 settlement master assisted in discussions with the defendant  
11 groups and provided for settlement purposes only, and that  
12 references back to the process that Mr. Barrett was referring  
13 to earlier today, and it is occurring in connection with  
14 these mediations and negotiations, the volume of commerce or  
15 volume of affected commerce data that is the touchstone  
16 ultimately for these settlement conversations in the  
17 pre-discovery phase for all of these cases.

18           We did have access to that information as well as  
19 other information from cooperators, ACPERA applicants,  
20 et cetera, to help us evaluate the conduct evidence in  
21 addition to the volume of commerce evidence.

22           We believe that accounting for the prospects of  
23 success the defense has asserted, the volume of commerce  
24 impacted, and the risks, cost and time associated with  
25 proceeding, these settlements represent a great outcome for

1       the class.

2                 Now, on the subject of notice, notice was provided  
3 to punitive class members in accordance with the notice plan  
4 approved by this Court, and that notice plan is detailed in  
5 the declaration of Tina Chiang from RG/2, the settlement  
6 administrator and notice service provider, that we are using  
7 in connection with these proceedings. They are the same  
8 vendor we have used with our other settlements.

9                 The notice was e-mailed to nearly 125,000 C-level  
10 executives at truck and equipment dealerships. It was sent  
11 via first-class mail to over 100,000 C-level executives at  
12 truck and equipment dealerships. It was posted on the  
13 [www.truckdealersettlement.com](http://www.truckdealersettlement.com) website that we had set up --  
14 or that our settlement administrators have set up in  
15 connection with this proceeding to post information about our  
16 settlements in this case. It was printed in  
17 The Wall Street Journal, The Automotive News, Automotive  
18 Week, and in the e-newsletters of the American Truck Dealers  
19 and The National Trailer Dealers. We are confident that this  
20 notice program was thorough and reached a very large  
21 percentage of the potential class members.

22                 THE COURT: You mentioned you think it reached 80  
23 or 90 percent of the class members?

24                 MR. PARKS: That is the assessment, I believe, of  
25 the settlement administration firm that we are using, and I

1 have no reason to doubt that at all.

2 THE COURT: Okay.

3 MR. PARKS: In terms of reaction of class members,  
4 it has been as positive as it could possibly be because we  
5 have received no objections and are aware of no opt outs.

6 Now, I would mention that this is, I think,  
7 particularly significant in the context of the types of class  
8 members we have here. These are large, sophisticated,  
9 well-capitalized businesses in some instances with their own  
10 in-house legal teams or in-house lawyers, and these are  
11 participants who are certainly capable of appreciating the  
12 significance of a class action settlement and of making their  
13 positions known in the event that they do not agree with the  
14 settlements or are not comfortable with the parameters of a  
15 settlement. They have not spoken up in not even a single  
16 one.

17 Now, with respect to the Rule 23 elements, our  
18 moving papers reviewed each of those elements and explained  
19 why we believe they are satisfied. Unless Your Honor has any  
20 particular question about that aspect of our motion, I would  
21 simply rely on our motion papers with respect to those  
22 points.

23 THE COURT: No, I've read it.

24 MR. PARKS: Does Your Honor have any further  
25 questions for me about the motion for final approval?

1                   THE COURT: No. Okay. The Court has reviewed this  
2 motion for final approval with the defendants and the truck  
3 and equipment dealers, and the Court notes that the -- I want  
4 to address the notice first. I'm not going to go through  
5 everything you said, where the notice was published and that,  
6 I've read it, and it appears to me that's adequate. I had  
7 approved the plan before, and I am pleased with the -- what  
8 is represented as the percentage of individuals or companies  
9 who know that they have this settlement, and so the notice  
10 has been proper -- properly executed.

11                  There have been no objections, and no opt outs that  
12 you know of or the Court is aware of.

13                  And in terms of the reasonableness, that is, is the  
14 settlement fair, reasonable and adequate. There, of course,  
15 is -- are a number of factors the Court must look at. I  
16 would like to briefly touch upon those.

17                  That's the likelihood of success is number one,  
18 and, of course, plaintiffs are always optimistic about their  
19 success, but in this case it certainly is not guaranteed, and  
20 there are some extremely difficult issues. It's complex. It  
21 will go on -- it has gone on for a lengthy period of time,  
22 and, of course, it will go -- continue to go on, if not  
23 settled, for a significant period of time at great expense.

24                  The Court relies tremendously on the judgment of  
25 counsel. I've said this before in other settlements, and

1 here I will repeat that the Court is very impressed with the  
2 ability of counsel and how they have handled these cases, how  
3 you have done in these cases, Counsel, and certainly you know  
4 the strengths and weaknesses of the case, and I believe it  
5 has been negotiated at arm's length, and that gives the Court  
6 great comfort in knowing and believing it's a fair,  
7 reasonable settlement.

8 Obviously we've talked about the reaction of class  
9 members, and certainly the factor on public interest. The  
10 public is always interested for this type of litigation to be  
11 taken care of with these complexities as soon as possible.

12 The Court also looks to whether the settlement  
13 class should be certified in this case, and I believe that  
14 given the numerosity which you have referred to and the  
15 common question -- the commonality, that is the question of  
16 law or fact that are common to the class, and we know that in  
17 antitrust price-fixing conspiracies by its very nature they  
18 deal with common legal and factual issues.

19 And the claims of the represented parties appear to  
20 be typical of the claims of the class as they all arise from  
21 the same event or practice or course of conduct.

22 Adequacy of representation, that relates to the --  
23 to both the individually named plaintiffs, and the Court  
24 finds that they have adequately, according to the information  
25 submitted by counsel, represented the class. And obviously

1      the attorneys who have been appointed -- or who have -- who  
2      are taking on this class I believe have adequately protected  
3      the interest.

4                 Therefore, the Court turns to the final question of  
5      whether the class plaintiffs demonstrated that common  
6      questions predominate over questions affecting only  
7      individual members, and, of course, I find that they do, and  
8      they have the same issues here.

9                 So therefore the Court finds that the class action  
10     is a superior method to adjudicating these -- this matter. I  
11     can't imagine it being done in any other way, to be honest.  
12     The Court approves the final settlement, and certifies the  
13     class for purposes of the settlement.

14                MR. PARKS: Thank you, Your Honor.

15                THE COURT: The next motion we have is the award of  
16     attorneys' fees and litigation expenses.

17                MR. PARKS: Correct, Your Honor. Interim class  
18     counsel, my firm, Duane Morris, has moved for the award of  
19     attorneys' fees in connection with this latest round of  
20     settlements and for reimbursement of litigation expenses that  
21     we've incurred in connection with prosecuting these claims.

22                We are seeking an award of fees representing  
23     30 percent of the settlement proceeds of approximately  
24     \$1.1 million after deduction of the cost of class notice and  
25     claims administration expenses and escrow agent costs.

1           The claims administration expenses are taken across  
2 the four settlements and capped at \$240,000 of expenditures  
3 under those agreements, and the escrow agent costs are capped  
4 at \$6,000, and those relate to the cost the escrow agents  
5 charge to set up the escrow account in the first instance,  
6 and then there's an annual fee. We've determined the \$6,000  
7 assuming one year of the annual fee because there will be  
8 some time between now and the proceeds are fully distributed,  
9 and I'm estimating that will be ideally by the end of next  
10 year. So we would only ever have one annual fee in the  
11 renewal period, so that's where we came up with the numbers  
12 there.

13           THE COURT: Do you have any awards for the named  
14 plaintiffs?

15           MR. PARKS: We have --

16           THE COURT: Okay.

17           MR. PARKS: We have already sought and obtained one  
18 round of awards from the starters and alternators case for  
19 the named plaintiffs.

20           THE COURT: Okay.

21           MR. PARKS: We have not sought any awards in  
22 connection with the radiators case for the named plaintiffs,  
23 but they have received awards in wire harnesses. It's the  
24 same group of named plaintiffs in wire harnesses, in  
25 bearings, in occupant safety systems, in starters and

1      alternators, and our assessment was that they have been well  
2      compensated for their time and efforts. That, in particular,  
3      serving as class representatives, is that the Court had been  
4      interested in a demonstrated investment of specific hours  
5      that relate to a particular award, and because there was an  
6      award for the starters and alternators matter already, and  
7      the intervening period has really been just since January  
8      until now of 2018, it was going to be in our assessment  
9      difficult to quantify any meaningful time that was unique to  
10     radiators during that period of time, and we thought all  
11     other things being equal that it would be the most fair way  
12     to proceed, to forego a request for an award with respect to  
13     the radiators settlements.

14                THE COURT: All right. So that won't be coming up?

15                MR. PARKS: It will not be coming up, that's  
16     correct.

17                THE COURT: And that sounds reasonable.

18                MR. PARKS: That's correct. So the dollar amount  
19     just so it is on the record here, it is certainly in our  
20     papers, of the fee award that we are requesting is \$857,697.  
21     Again, that's 30 percent of the proceeds of the settlement  
22     after subtracting the costs I mentioned a moment ago.

23                Counsel is also seeking an award of \$37,297.32 for  
24     cost reimbursement. The schedule of costs for which we are  
25     seeking reimbursement is set forth in Exhibit 1C to our fee

1     petition motion. The lion's share of the costs relate to  
2     payments to cover court-appointed settlement masters for  
3     their services related to the facilitation of settlement  
4     discussions between the parties.

5                 Regarding the requested fee award, that represents  
6     a multiple of 1.38 of the lodestar which here is  
7     approximately \$620,000. I would note that that runs through  
8     August 30th, 2018 only. It would not include the time  
9     associated with preparing the motion for final approval, for  
10    coming here today, for all of the future settlement  
11    administration efforts that we will have to oversee. And so  
12    my strong suspicion is that once all of the final accounting  
13    is done and following all of those activities, we will have  
14    invested significant additional time on these files, and this  
15    will be, as I mentioned, our final round of settlements in  
16    this proceeding, certainly for radiators, starters and  
17    alternators meaning that there aren't further settlements  
18    from which we could be compensated for that future time.

19                 And while the 1.38 multiple on lodestar is in  
20    excess of 1.0, it's, first of all, well within the range that  
21    courts in the Sixth Circuit have approved, and, second of  
22    all, in the final accounting likely to be much closer to 1.0  
23    once all of the time in this proceeding is ultimately wrapped  
24    up after the administration of the -- and distribution of the  
25    settlement proceeds.

1                   During the relevant --

2                   THE COURT: As to the costs, before you leave  
3 that --

4                   MR. PARKS: Yes.

5                   THE COURT: For the arbitrators and mediators, are  
6 you satisfied that these are the costs that they actually  
7 expended and are reasonable?

8                   MR. PARKS: Absolutely. I mean, we are talking  
9 about some of the best mediators in the United States. I'm  
10 sure that's part of why the Court has brought them into this  
11 process. They don't come cheap.

12                  THE COURT: Well, I guess --

13                  MR. PARKS: But they did provide effective service  
14 and oversight and help in many cases, not every one of these  
15 settlements, but I would say for three of the four helped  
16 actively bring the parties together and achieve a resolution.

17                  In one of the four I would say that we had  
18 extensive involvement of the mediators in trying to  
19 facilitate discussions, and frankly most of the time relates  
20 to that particular undertaking with this particular defendant  
21 group.

22                  THE COURT: I question some of these costs. This  
23 is somewhat picky, but telephone/fax expenses?

24                  MR. PARKS: I believe those are expenses for  
25 conference calls for -- you know, we have a firm dial-in

1      number that we can use as a standing -- for long-distance  
2      phone calls, and those charges are charged back. That is  
3      not, my understanding, a fee for a standard long-distance  
4      call, but it's for the conference call services. That's at  
5      least my understanding. I would have to talk to our  
6      telecommunication folks to confirm that that's what that is,  
7      but that's my understanding.

8                THE COURT: What about the \$1.82 for postage?

9                MR. PARKS: That's a good question. I can't tell  
10     you about that. My guess is something at some point was sent  
11     snail mail or maybe a couple of things were sent via regular  
12     mail, although frankly in these --

13               THE COURT: Don't some of these outrageous fees  
14     include some overhead that might be telephone and \$1.82? I  
15     mean, I'm serious, this really gets me angry -- -

16               MR. PARKS: I do --

17               THE COURT: -- when I see this.

18               MR. PARKS: I do not know frankly how these are  
19     calculated. I rely on our accounting department to track  
20     these matters. And this is the same exact way that we would  
21     track them for any hourly-rate client. And as Your Honor may  
22     be aware, my firm is primarily a defense firm and so we are  
23     primarily representing clients who pay by the hour, and  
24     these -- this would be exactly the costs that they would pay  
25     in a standard hourly-rate arrangement where they have agreed

1      to pay litigation costs on an hourly fee.

2                THE COURT: Well, the Court is going to strike  
3 photocopying and the postage of \$1.82, and the telephone.  
4 You may have the rest.

5                MR. PARKS: Thank you, Your Honor.

6                Now during the relevant period, which was from  
7 January 27th, 2018 to August 30th, 2018 for the starters and  
8 alternators case, and from inception through August 30th,  
9 2018 for the radiators case, Duane Morris attorneys and staff  
10 billed approximately 1,250 total hours to these cases as  
11 reflected in the billing details attached as Exhibit 1B to  
12 the fee petition.

13               You will note that the lion's share of that time is  
14 my time, the time of Mr. Shotzbarger and the time of  
15 Mr. Potere because we have been the lawyers most active in  
16 these matters during that period of time. Mr. Shotzbarger  
17 and Mr. Potere are associates with our firm, and I am a  
18 partner.

19               So while there are a number of billers listed, many  
20 of them have billed a limited amount. For example, Mr. Mack,  
21 who is the chairman of our trial department, and to whom I  
22 report on this matter internally, has a limited number of  
23 hours, but that's -- he's checking with me to make sure  
24 things are on track and getting status reports and that sort  
25 of thing, but the time is primarily mine, Mr. Shotzbarger's

1      and Mr. Potere's.

2           Now has been the case with virtually all of the  
3        actions brought on behalf of the truck and equipment dealers  
4        by my firm in this MDL proceeding, I think it's important to  
5        consider that in these three cases the enforcement actions  
6        were focused entirely on passenger vehicles. As a result, my  
7        firm had to develop the claims of the truck and equipment  
8        dealers from scratch, and we are very proud to have been able  
9        to do so, and in so doing create a meaningful recovery for  
10       the class where otherwise there would have been none, and we  
11       would submit that that should be considered an important  
12       factor in determining what our fee award should be.

13           With that, Your Honor, I'm happy to answer any  
14        questions that you have.

15           THE COURT: All right. I have no questions. I  
16        think that obviously in these attorneys' fees matters there  
17        is a lodestar method and there is a percentage of the fund  
18        approach. I prefer the percentage of the fund approach. I  
19        think it most accurately sets forth compensation at a rate  
20        that everybody understands versus looking at the individual  
21        hours. I do the lodestar crosscheck -- you have done that  
22        for me actually in this case, and the Court has verified it,  
23        and it is certainly within the range acceptable in the  
24        Sixth Circuit.

25           And I note there is, as you know in this case -- in

1      these cases, a great variation between like 20 percent and  
2      30 percent, I think there was one that was 33.3 percent. In  
3      this case, the Court looks at the factors that it has to  
4      consider, and the Court finds that the results achieved is  
5      very strong in this case, that you -- that you had a great  
6      stake, you took it on a contingency fee basis and it was  
7      clearly not a clear-cut case for plaintiff, and it was very  
8      complex. The Court looked at the hourly rates and also your  
9      skill and standing in the community in which you work. And  
10     the Court, most importantly in this case, as with much of the  
11     directs, looked at the fact, as you indicated, that you have  
12     large sophisticated members of your class and that many of  
13     them have their own in-house counsel, and to me that means  
14     that these individuals understand what it means to have a  
15     contingency fee of 30 percent.

16            I feel differently in the end payor class, but I  
17     think that there are no objections to this fee. It seems to  
18     be fair and reasonable, and the Court will grant the fee of  
19     30 percent.

20            MR. PARKS: Thank you very much, Your Honor. We  
21     will get an amended order reflecting the modifications the  
22     Court has requested to the expenses component to the Court  
23     directly.

24            THE COURT: Thank you.

25            MR. PARKS: Thank you, Your Honor.

1                   THE COURT: Amongst all of these papers, I lost my  
2 agenda.

3                   Mr. Tallerico, I didn't call on you, I'm sorry.

4 Who do you represent? You show up here and there.

5                   MR. TALLERICO: I represent the T.RAD defendants.

6 I do want to note, these are the fewest words I have ever  
7 said in this courtroom.

8                   THE COURT: Well said -- well spoken.

9                   I want to make clear the attorneys' fees were after  
10 the deduction of the expenses. I think you said that  
11 in your --

12                  MR. PARKS: We will make sure that our order  
13 reflects that. Just by point of clarification as we speak,  
14 that would be both the expenses identified as well as the  
15 expenses that the firm advanced for which we will be  
16 reimbursed?

17                  THE COURT: Yes.

18                  MR. PARKS: Okay. We will make sure that the  
19 revised order reflects that.

20                  THE COURT: Thank you. Direct purchaser -- auto  
21 dealers or direct purchasers, who's ready?

22                  MR. KANNER: For the direct purchasers, we are  
23 ready.

24                  THE COURT: And there are no objections, so you  
25 don't expect anybody to come here?

1                   MR. KANNER: None that I am aware of.

2                   THE COURT: Just one minute while I find my papers.

3                   All right. This is the direct purchaser plaintiffs' motion  
4                   for final approval of settlement with Tokai Rika.

5                   MR. KANNER: Tokai Rika and Toyoda Gosei.

6                   THE COURT: Okay.

7                   MR. KANNER: And there will be three altogether,  
8                   Your Honor. I'm going to do those two.

9                   THE COURT: Okay.

10                  MR. KANNER: And Mr. Kohn will be handling the  
11                  third one on air conditioning systems.

12                  THE COURT: All right.

13                  MR. KANNER: Your Honor, my name is Steve Kanner,  
14                  again, for the record, and on behalf of direct purchaser  
15                  plaintiffs.

16                  It's my pleasure to address the Court today with  
17                  respect to final approval including proposed orders of final  
18                  judgment releasing the defendants, and an order approving the  
19                  proposed plan for distribution of settlement funds for  
20                  Tokai Rika and Toyoda Gosei.

21                  If Your Honor deems it appropriate to grant final  
22                  approval on these settlements, one of the other co-counsel,  
23                  my colleague, Greg Hansel, seated at the table, will be  
24                  addressing the Court on the motions for attorneys' fees and  
25                  litigation costs.

1           With respect to Tokai Rika and Toyoda Gosei, with  
2 the Court's permission I would like to proceed with both  
3 approval motions together since the facts are similar, and  
4 they both are based on the common history of what took place  
5 in the OSS or occupant safety systems case, and, of course,  
6 the standard required for the Court's approval of those  
7 settlements are identical.

8           If I can go into the litigation history for the  
9 record. The Court appointed the four co-lead counsel firms  
10 here today, and Mr. Fink's firm as liaison counsel back in  
11 August of 2012. We've gotten to know each other a little bit  
12 since then, Your Honor. You consolidated this matter in  
13 January of 2012, and our first consolidated complaint was  
14 filed later on that year, which was followed by a  
15 second-amended complaint in February of 2014 which had the  
16 effect of extending the class period back to 2003.

17           The defendants filed multiple motions to dismiss  
18 the direct purchaser plaintiffs' consolidated amended  
19 complaint, which included 12(b)(6) motions filed on  
20 October 21st, 2013, and after argument the motions were  
21 denied in August of 2014.

22           In July of 2015, Your Honor approved the settlement  
23 in the amount of \$35.516 million with AutoLiv, which was our  
24 icebreaker settlement in that case. And you -- excuse me.  
25 Your Honor granted final approval for that in January of

1      2015.

2                 Shortly thereafter in February of that year, we  
3 announced a settlement with TRW in the amount of  
4 \$6.5 million, which was preliminarily approved in April of  
5 2015, and final approval was granted in July of 2015 as well.

6                 Fast forward to 2017. November 14, 2017 plaintiffs  
7 announced proposed settlements with the Toyoda Gosei  
8 defendants in the amount of \$34 million, which was  
9 preliminarily approved by Your Honor this past April.

10                And finally, we reached a settlement with the  
11 Tokai Rika defendants in the amount of \$4 million the end of  
12 January of this year, and you also gave preliminary approval  
13 of that on April 25th.

14                With those settlements only one other defendant,  
15 Takata, currently remains in the case. Of course, as you  
16 heard earlier today from one of my colleagues, the Takata  
17 bankruptcy continues. Each group has been working with the  
18 trustee as has ours, the direct purchaser plaintiffs, and in  
19 the last 30 days, we are actually getting down to serious  
20 numbers which we believe are doable, and I think the trustee  
21 believes they are doable.

22                I hate to be optimistic, it's not my nature as a  
23 plaintiff's lawyer, but I think aspirationally we can say  
24 that within six months that resolution should be accomplished  
25 with Takata, and we'll advise the Court accordingly. We

1     would like to clean this up because that would be the last  
2     remaining defendant in this case.

3                 THE COURT: Good.

4                 MR. KANNER: Let's talk briefly about the terms of  
5     the agreement and payments for the class. For Toyoda Gosei,  
6     as I mentioned, it is a \$34 million settlement, and that's  
7     subject to stipulations which I briefly mentioned earlier  
8     today, and I've provided that the total value of that given  
9     settlement could not be reduced below \$14.25 million  
10    depending on the opt-outs. The information, of course, is  
11    disclosed in the notice with the range of the settlements.

12               With respect to Tokai Rika, I also mentioned that  
13    is a \$4 million settlement, and that settlement is not  
14    subject to a reduction clause, but it is, as is often the  
15    case, subject to what is referred to as a blow provision; in  
16    case 10 percent or more of the class opts out, the defendant  
17    has the option to scotch the agreement. We don't believe  
18    that is going to take place based on the responses thus far.

19               Another element of the settlement as is typically  
20    the case is cooperation. Each of the settlement agreements  
21    list the nature of the cooperation. I'm not going to go  
22    through each element individually, but I can tell the Court  
23    that they generally include production of documents and data  
24    not previously produced, assistance and understanding the  
25    data in particular, declarations and affidavits of the

1      relevant witnesses, and proffers by defense counsel, all of  
2      which will go to further inculpate Takata, but, of course,  
3      Takata is in a unique position of being in bankruptcy.

4                With respect to the settlement status as being  
5      fair, adequate and reasonable. The settlements before you  
6      today were obtained, as we set forth in the brief, through  
7      diligent hard work of counsel on both sides of the V. In  
8      each case the negotiations were, indeed, arm's length by  
9      experienced counsel who made decisions recognizing the  
10     inherent uncertainties of law and, in fact, along with the  
11     related risks of -- and costs of highly complex litigation.

12              Plaintiffs' counsel determined that the dollar  
13     value, coupled with the cooperation elements, provided ample  
14     justification to enter into these settlements.

15              In the course of the litigation, plaintiffs'  
16     counsel reviewed millions of documents, I think it's about  
17     3.5 million. I did the analysis last night.

18              THE COURT: Could you speak a little more into the  
19     microphone.

20              MR. KANNER: I'm sorry. Bad habit. I was just  
21     saying that about 3.5 million documents were produced and  
22     reviewed by plaintiffs' counsel in connection with this  
23     litigation, in addition to those documents produced by class  
24     representatives and working with them on their materials.

25              Additionally, plaintiffs conducted interviews of

1 potential witnesses provided by defendants as part of the  
2 cooperation agreement as well as detailed proffers by the  
3 earlier settling defendants.

4 Accordingly, Your Honor, we believe it is  
5 appropriate to conclude that the settlement and our decision  
6 to reach these settlements was well founded and falls within  
7 the range of reasonableness.

8 With respect to the notice settlement. Following  
9 preliminary approval by Your Honor, there was 1,342  
10 individual copies of the notice of proposed settlement that  
11 were mailed to all potential class members identified by the  
12 defendants. On May 16th of this year, pursuant to the  
13 Court's direction, a summary notice of proposed settlement  
14 with today's hearing date was published in one edition of  
15 the Automotive News and in the national edition of  
16 The Wall Street Journal. Both of those notices took place on  
17 May 21st of this year.

18 Additionally, copies of the notice are posted  
19 online at autopartslitigation -- I'm sorry,  
20 autopartsantitrustlitigation.com, which has been the direct  
21 purchaser plaintiffs' website.

22 The declaration of Mr. Ryan Kao, who is a senior  
23 project manager with Epiq Class Action & Claims Solutions,  
24 reflects that as of September 6th of this year there were 692  
25 page views of the settlement website, and 508 unique visits

1      to the settlement website, per se. And Mr. Kao's report is  
2      attached as Exhibit 1 to the settlement counsel's report on  
3      dissemination of notice and proposed settlements.

4                 Finally, counsel for both of the settling  
5      defendants today have advised us that they have, indeed,  
6      fulfilled their respective obligations under the Class Action  
7      Fairness Act by disseminating requisite notices to the  
8      appropriate federal and state officials on April 11th, 2018  
9      for Tokai Rika, and January 19th, 2018 for Toyoda Gosei.

10                With respect to any requests for exclusion, as the  
11      Court knows, the class members here are some of the largest,  
12      extraordinarily sophisticated OEMs in the world represented  
13      by highly competent in-house and outside counsel.

14                As of September 6th, Epiq has received -- Epiq, of  
15      course, is the settlement administrator -- has received three  
16      requests for exclusion from the Tokai Rika settlement, those  
17      being Ford, Nissan and Toyota, and remember each of those  
18      entities have various subentities, and only one request in  
19      the Toyoda Gosei defendant settlement class, and that would  
20      be Toyota.

21                Finally, Your Honor, you asked earlier if there  
22      were any objections, and for the record I want to clarify  
23      that we have received no objections to any of the settlements  
24      that we are discussing today.

25                In short, Your Honor, the direct purchaser

1      plaintiffs' counsel believe that the request for final  
2      approval of these two settlements, which I am describing for  
3      the Court now, have met the requirements of Rule 23 in terms  
4      of commonality, numerosity, typicality and adequacy. We  
5      firmly believe that the settlements are fair, reasonable and  
6      adequate, and submit that the class' interest in this case  
7      are best served by the orders of final approval for the  
8      settlements. Of course, Your Honor, this is the point where  
9      I will ask or answer any questions the Court might have.

10                THE COURT: Okay. No questions. The Court has  
11      reviewed the settlement in this matter, and I'm not going to  
12      repeat everything that you said, I don't think I need to do  
13      that. I do find that the settlement is fair, reasonable and  
14      adequate, and the Court judged it under the numerous factors  
15      set forth, and that is the likelihood of success on the  
16      merits, and, again, you're optimistic, but success is not  
17      guaranteed, and these issues create great risk in this case.

18                Certainly, the case is complex, expensive, and we  
19      know the duration, and that if it was not settled as such, it  
20      would go on for a considerable period of time.

21                The Court relies heavily, as it has said numerous  
22      times before, on the experience and judgment of counsel, and  
23      I find that counsel has made an informed decision in this  
24      case as to how it should be resolved and how it is resolved,  
25      and that they did so at arm's length after much discovery,

1      and it's shown in the reaction of class members where we know  
2      that there are no opt outs -- at least none received by the  
3      Court or counsel.

4                    MR. KANNER: No objections, Your Honor. The  
5      opt-outs --

6                    THE COURT: No objections. I'm sorry. There are  
7      the few opt outs that you had mentioned, which the Court is  
8      aware of. And the Court finds it is in the public interest  
9      to settle this complex antitrust litigation.

10                  The Court looks at whether the notice was proper,  
11      and as you stated in this case, Mr. Kanner, about the notice  
12      and who received it and how it was done, the Court finds that  
13      that was reasonable -- it was a reasonable plan and  
14      reasonably executed.

15                  The class should be certified the Court finds in  
16      this matter to effectuate the settlement. There certainly is  
17      numerosity. We know there are over a thousand -- you  
18      said 1,300-something of number of direct purchaser entities.  
19      There's commonality in this antitrust action. There is also  
20      typicality, and the representatives are typical of the issues  
21      raised in this case; they arise from the same practice.  
22      There is the adequacy of representation in that the attorneys  
23      are also adequately representing the parties, as I've  
24      referenced before. And the common question predominates, I  
25      don't think there is any question about that here, it has

1 never been raised, so the Court approves that.

2                   The next issue is the distribution of this matter.

3                   The Court looks at it, and it must be fair, reasonable and  
4                   adequate. There is a plan of allocation based on the type  
5                   and extent of the damages or the injuries on this -- in this  
6                   case, and an allocation formula is developed. I can't say I  
7                   know that formula, but I rely on counsel and on the firm  
8                   executing it, that it has a reasonable and rational basis,  
9                   and that the opinion of counsel is entitled to considerable  
10                  weight.

11                  The notice sent out describes the plan of  
12                  allocation here, and I want to say the same thing that I said  
13                  in the last case. Here with the direct purchasers, you have  
14                  a more sophisticated group, and that they are well able to  
15                  understand what this is, and I'm sure looked at that plan of  
16                  allocation, and the Court has certainly approved similar  
17                  pro rata distributions in the past, and I will approve this  
18                  plan also. Okay.

19                  MR. KANNER: Thank you very much, Your Honor. I  
20                  believe drafts of each of those orders has already been  
21                  presented to the Court, but if not, we will certainly make  
22                  sure that if they can't be located we will provide them  
23                  again.

24                  THE COURT: Okay. Molly will let you know if they  
25                  can't be located.

1                   MR. KANNER: Thank you very much, Your Honor.

2                   THE COURT: Thank you. All right.

3                   MR. KOHN: I can still say good morning, Your  
4 Honor.

5                   THE COURT: Good morning.

6                   MR. KOHN: Joseph Kohn, Kohn, Swift & Graf, in the  
7 air conditioning systems case.

8                   I am pleased to be here to present as briefly as  
9 the Court will allow, the motion for final approval of the  
10 initial settlement, and that action is between direct  
11 purchaser plaintiffs and a defendant, and this is the Valeo  
12 defendant.

13                  I will do my best not to repeat the law and the  
14 presentations that Your Honor's very familiar with and not to  
15 repeat what the Court has just heard from my colleague,  
16 Mr. Kanner.

17                  With respect to the Valeo settlement, our  
18 colleague, Mr. Hansel, will also be addressing the issue with  
19 respect to our request for fees and costs in the event that  
20 Your Honor were to approve the settlement.

21                  Your Honor, plaintiffs in this action -- the direct  
22 purchaser plaintiffs are Tiffin Motor Homes and the trustee  
23 for Fleetwood Entities.

24                  The settlement agreement was entered into  
25 significantly on February 14th of 2017 of last year,

1      Valentine's Day, so we do have affection for defense counsel  
2 nonetheless. We did deal at arm's length throughout the  
3 process. And maybe a moment in this case in the history of  
4 this, Your Honor, we in the antitrust bar, I think on both  
5 sides of the V, are really lucky to be in this bar, and the  
6 cordiality and professionalism that we deal with, and I think  
7 the stewardship and direction of this Court and Mr. Esshaki  
8 has underlined that throughout these proceedings, and really  
9 as has the mediators to be able to facilitate these  
10 settlements.

11            A second amended consolidated complaint was filed  
12 as recently as May 28th, 2018, so we have been continuing our  
13 investigation, proving this case as this settlement has been  
14 pending. Your Honor entered the notice order on June 14th,  
15 2018, and the notice was provided by first-class mail  
16 June 28th, 2018, and I have a similar affidavit from the  
17 gentleman from Epiq.

18            There were 1,732 notices mailed directly to class  
19 members. We also have the publication programs through  
20 Automotive News and press releases which to the extent in the  
21 direct purchaser cases, unlike some of the other classes  
22 where we have a direct mailing list of the purchasers from  
23 the records of the defendant, the publication is really a  
24 belt and suspenders or a cherry on top. The best notice is  
25 the mailed notice, but we also do the publication notice to

1 make sure we are not missing someone. And through the course  
2 of the case, we really zeroed in and updated that and focused  
3 more on the Automotive News and that particular industry as  
4 opposed to the more generic The Wall Street Journal and  
5 USA Today notices.

6 With respect to the settlement, we -- as with all  
7 of the settlements, the direct purchasers have presented to  
8 the Court; there has been no objections from any of the class  
9 members. We did receive opt outs from, in this case, six  
10 separate groups of purchaser entities. Ford has opted out in  
11 every single one of them, Ford plus five, and in this case it  
12 was General Motors, Daimler, Mercedes Benz, Nissan and BMW;  
13 they are different entities.

14 Again, why they choose one case and not the other?  
15 A few moments ago Mr. Kanner mentioned Toyota. Well, Toyota  
16 stayed in this case. Honda stayed in this case. Chrysler  
17 and Subaru. I thought maybe we had done something to offend  
18 the Germans, but Volkswagen stayed in, so it wasn't anything  
19 with them, but I think significantly as well, that the  
20 hundreds and hundreds of the tier 1 and tier 2, the smaller  
21 direct purchasers, have stayed in the class uniformly.

22 Your Honor, the brief we had filed on July 30, 2018  
23 we believe goes into detail on the well-established standards  
24 for settlement approval, the relevant factors of risk,  
25 et cetera. That's pages 7 through 15 of the brief, and we

1      would respectfully rely upon those discussions.

2                 The key points are that with respect to this case,  
3    air conditioning systems, Valeo is the icebreaker settlement,  
4    and we think that that phenomena is proving effective. Once  
5    again, I'm not in a position to recite results but hopefully  
6    by the next time we are here, I think in November, we have  
7    some other settlements, and we can give Your Honor some  
8    concrete results with respect to the effect of the icebreaker  
9    settlement, but they can say the temperature is getting  
10   warmer and the ice is melting in air conditioning.

11               This settlement is in the range of reasonableness.  
12    The total amount was \$9.5 million, and that could be reduced  
13   based on opt outs to a low of \$8 million as a result of the  
14   six entities that I recited earlier. We came out right in  
15   the middle of that, so the net final amount of the settlement  
16   is \$8.75 million.

17               So that while there was protection for the settling  
18   defendants if additional entities opted out, there was a  
19   benefit to the class, which they didn't, and we ended up  
20   right in the midpoint of that range that the settlement --

21               THE COURT: Well, that is the final amount, the  
22   8.75?

23               MR. KOHN: The 8.75 is the final amount which would  
24   be available. And this is a case we are not yet proposing  
25   the claim form process, unlike in occupant safety systems

1 where there were multiple settlements. Again, that relates  
2 to the issue that our colleague, Mr. Parks, talked about  
3 earlier that there is some efficiency to try to accumulate  
4 several settlements before we go through the distribution  
5 process.

6 So, again, the reaction of the class which we had  
7 recited in the filing dated September 12th, 2018, that was  
8 our report with respect to the notice program which included  
9 the declaration from the Epiq people and the list of the  
10 opt-outs, so all of that material is on the record.

11 Your Honor, we would respectfully request that  
12 Your Honor approve this settlement between our class and  
13 Valeo. Actually it is the largest of any single-class  
14 settlement with Defendant Valeo, which is a factor in terms  
15 of other settlements that the Court has approved.

16 And the order has been submitted. Again, if not,  
17 Messrs. Fink will have a copy of the final judgment which was  
18 negotiated between the parties.

19 Thank you, Your Honor.

20 THE COURT: All right. The Court approves the  
21 settlement of what is now with the opt-outs \$8.75 million.  
22 The Court finds it is fair, reasonable and adequate under the  
23 standards as set forth in our rules, and we note that there  
24 are no objections. There are the opt-outs that have been  
25 named, I think Ford, GM, Daimler, AG Daimler Truck, Mercedes,

1      Nissan and BMW, and that's what caused the reduction in the  
2      proposed settlement.

3                 The Court notes that the settlement certainly is  
4      one that -- excuse me while I find it -- that meets the  
5      standards. The likelihood of success is, as we have talked  
6      about before, is hopeful but very technical and certainly not  
7      guaranteed in this case.

8                 The case is complex. It costs a lot of money and  
9      could go on for a lot longer if not resolved. And the amount  
10     of the discovery in this case has been extensive, and we know  
11     that -- what the reaction of the class is as the Court  
12     referred to it.

13                The judgment of experienced counsel. Again, I  
14     stated this is one the Court relies on, and finds that  
15     counsel has the experience to evaluate the massive discovery  
16     that was done in here in this class and negotiated this  
17     settlement at arm's length.

18                It is certainly in the public's interest to resolve  
19     these antitrust actions which are notoriously difficult and  
20     unpredictable.

21                So the next issue is the notice, and the Court is  
22     satisfied with the notice. As Mr. Kanner indicated, there  
23     were direct mailings so you know who your plaintiff class is,  
24     you know the individual members, and there were direct  
25     mailings, plus additional notices that have been referenced

1      with the publication and the online site.

2                 The settlement class the Court finds should be  
3 certified here because of the numerosity. We know that there  
4 are at least 1,700 members, the questions of law or fact are  
5 common in antitrust cases, and the -- certainly the claims  
6 are typical of the parties here; there's adequacy of  
7 representation by both the named plaintiffs and the  
8 attorneys. There's a common question that predominates over  
9 any individual action. And the Court finds, considering all  
10 of these factors, and the notice, which was submitted and  
11 effectuated in this case, is fair, reasonable and adequate,  
12 and the Court does approve the settlement and certifies the  
13 class.

14                MR. KOHN: Thank you, Your Honor.

15                THE COURT: Thank you. Okay.

16                MR. HANSEL: May it please the Court, good morning,  
17 Your Honor. Greg Hansel for the direct purchaser plaintiffs.

18                THE COURT: Good morning, Mr. Hansel.

19                MR. HANSEL: This morning, Your Honor, I will be  
20 asking the Court to award attorneys' fees, expenses and  
21 incentive awards to direct purchaser counsel and direct  
22 purchaser named plaintiffs and proposed class representatives  
23 in the three settlements that the Court has just approved;  
24 the two settlements in occupant safety systems, Toyoda Gosei  
25 and Tokai Rika, and the one settlement in air conditioning

1 systems with Valeo.

2 With the Court's permission, in the spirit of  
3 efficiency, there are many common points, and I would just  
4 ask if I may argue them together?

5 THE COURT: You may.

6 MR. HANSEL: Thank you. Starting with OSS, some of  
7 this the Court has already heard, so I'll try to be brief.  
8 The total settlement with Toyoda Gosei was \$34 million.  
9 Their largest customer, Toyota, opted out, and that reduces  
10 the settlement to \$14.25 million. The Tokai Rika settlement  
11 in OSS is for the fixed amount of \$4 million, so that was not  
12 reduced. So the two OSS settlements total \$18.25 million.

13 Notice was mailed to the 1,342 class members --  
14 potential class members. Also, as the Court noted, notice  
15 was provided by publication and online. And there were -- in  
16 addition to there being no objections to the settlements  
17 themselves, there were also no objections to this motion for  
18 fee expenses, expenses and incentive awards.

19 Turning to air conditioning systems in the Valeo  
20 settlement, the original total amount of the settlement was  
21 \$9.5 million, and after the opt-outs that Mr. Kohn recited,  
22 the final settlement amount is \$8.75 million. Notice was  
23 published, was distributed by mail to 1,732 class members,  
24 and online. And, again, there were no objections to either  
25 the settlements or for purposes of this motion, the

1      attorneys' fees, expenses and incentive awards requested.

2                Direct purchaser plaintiffs' counsel respectfully  
3      requests an attorney fee of 30 percent in connection with  
4      both the OSS and the air conditioning systems settlements.  
5      And we request that as the Court ordered in the last ruling  
6      you made on an attorney-fee motion that we made, that the  
7      30 percent be applied to the settlement after deducting  
8      litigation expenses.

9                Here are some of the key points as noted in our  
10     briefs in favor of this request. The settlements themselves  
11     are fair, reasonable and adequate, and the Court has so  
12     found. The reaction of the class members has been excellent  
13     with very few opt outs and no objections, so there's an  
14     indication of broad support.

15               We ask the Court to apply, as the Court discussed  
16     earlier in the case of the truck and equipment dealers, the  
17     percentage of the fund approach. This approach conserves  
18     judicial resources, eliminates disputes about the  
19     reasonableness of rates and hours, aligns the interest of  
20     counsel with that of the class -- with those of the class,  
21     and is typical in this type of litigation. The 30 percent we  
22     request is consistent with the other fee awards in this  
23     Circuit, as noted in our brief, and in this very MDL case  
24     that the Court has awarded in the past.

25               In both cases direct purchaser plaintiffs' counsel

1      vigorously prosecuted and effectively pursued the DPP actions  
2      in OSS and air conditioning through our factual  
3      investigation, drafting of pleadings, reviewing and analyzing  
4      a vast number of documents in the millions of pages. And I  
5      would just note that many of these documents were produced  
6      under the Court's order, which was a subject of discussion  
7      earlier today, that all guilty plea defendants must produce  
8      the documents they produced to the Department of Justice.  
9      That order, which the Court entered a long time ago, and has  
10     updated from time to time in the MDL, resulted in a vast  
11     trove of evidence which direct purchaser counsel have been  
12     able to analyze.

13            We analyzed this using -- it sounds strange to say  
14        it, but human review as well as sophisticated analytics. We  
15        have used Japanese language reviewers as well as English  
16        language reviewers, who are also attorneys. We have found  
17        these people, and they have assisted in the review.

18            In addition, we have received productions of  
19        documents from ACPERA applicants -- from the amnesty  
20        applicants which have been very helpful.

21            And the Valeo settlement is the first settlement in  
22        the air conditioning case, but the Toyoda Gosei and  
23        Tokai Rika settlements are not the first settlements in the  
24        OSS case. In that case we had previous settlements with  
25        AutoLiv and TRW, and as a result of the cooperation of those

1      settlements, we received substantial cooperation of those  
2      settling -- those early settling defendants against the  
3      remaining defendants at the time, and that took the form of  
4      witness interviews, productions of documents, and attorney  
5      proffers which are very helpful in giving us a roadmap to the  
6      conduct.

7                As an example of a witness interview, I can attest  
8      personally, I spent three days interviewing a senior Japanese  
9      executive in the seatbelt industry, who was employed by one  
10     of the settling defendants in OSS, in the Lompoc Federal  
11     Prison in California along with attorneys representing the  
12     end payors and the auto dealers. We interviewed this  
13     gentleman for three days in the prison with the cooperation  
14     of the federal prison authorities, and it gave us a great  
15     deal of insight into the conduct and the nature of the  
16     industry and the culture that gave rise to the conduct in the  
17     MDL as a whole, frankly but certainly in the OSS case.  
18     That's just one example of the type of work that counsel have  
19     done in the case.

20               In addition, we took a great deal of time  
21     negotiating settlements. The mediators have been very  
22     effective and continue to be. It happens that in the case of  
23     all three of these settlements, there has been what's  
24     referred to as bilateral, which means we didn't use the  
25     mediators. The attorneys talked directly with each other,

1      and the parties participated in direct negotiations.

2                THE COURT: Imagine that.

3                MR. HANSEL: And it goes back to the  
4 professionalism that Mr. Kohn mentioned, so you can still do  
5 it, and it happens especially in the antitrust bar, and it  
6 certainly happened in these settlements, and it saves some of  
7 the expense that the Court noted that mediators can cost, but  
8 I think that expense is usually well worth it, having said  
9 that. We also prepared the settlement documents and motion  
10 papers that are before the Court today.

11               The Court, in addition to applying the usual  
12 percentage of fund standard, the Court has employed the  
13 lodestar crosscheck in the past.

14               In the OSS case, as of July 31, 2018, direct  
15 purchaser counsels' lodestar was \$8,697,966.49. If the Court  
16 were to award the 30 percent requested, and taking into  
17 consideration the fees that the Court awarded in the earlier  
18 OSS settlements in AutoLiv and TRW, the overall lodestar  
19 multiplier would be 1.84, which is below 2 obviously and well  
20 within the range that courts have approved for the  
21 crosscheck.

22               And the actual fee that we are requesting in  
23 dollars, 30 percent of \$18,250,000, minus costs and expenses  
24 of \$32,847.34, would result in a fee of \$5,465,145.80.  
25 That's in OSS.

1           Turning to air conditioning systems, as of  
2 June 30th, 2018, the lodestar of DPP counsel was  
3 \$1,810,061.25, and the fee requested represents a multiplier  
4 of 1.44 times lodestar. By the way, there is an error in the  
5 notice report which said it was 1.38, it's actually 1.44.

6           So if the Court granted a 30-percent fee in the  
7 Valeo air conditioning settlement, out of the settlement fund  
8 of \$8.75 million, after deducting costs and expenses of  
9 \$46,704.52, the fee in dollars would be \$2,610,988.64.

10          The Sixth Circuit factors in evaluating a fee  
11 include the value of the benefit rendered to the class, the  
12 value of the services on an hourly basis, that's the lodestar  
13 crosscheck we've just discussed, whether the services were  
14 undertaken on a contingency fee basis meaning that there was  
15 a risk that plaintiffs' counsel would recover nothing or an  
16 insufficient amount to cover their lodestar. This did happen  
17 in the wire harness case where the fee awarded was less than  
18 half of the lodestar, so it varies from part to part even  
19 within this MDL.

20          Another factor is society's stake. The Court  
21 mentioned the public interest earlier today, and in rewarding  
22 attorneys who produce such benefit in order to maintain an  
23 incentive for others, the complexity of the litigation, and  
24 professional skill and standing of counsel.

25          With respect to the allocation of fees among lead

1       counsel, liaison counsel and supporting counsel for direct  
2 purchasers, we ask the Court to authorize interim lead  
3 counsel to allocate the fee among the law firms who have  
4 contributed to the result.

5               Finally, I already recited the amounts of  
6 litigation costs and expenses, and we respectfully request  
7 that the Court approves reimbursement of those amounts.

8               Finally, we request the Court grant incentive  
9 awards to the class representatives in both cases, and we  
10 request that those be in the amount of \$30,000 each.

11              In the OSS case there are three class  
12 representatives, Findlay Industries, Beam's Seatbelts and  
13 NM Holdings.

14              In air conditioning there is one -- two class  
15 representatives, Tiffin and Fleetwood -- the trustee of  
16 Fleetwood, as Mr. Kohn mentioned.

17              None of the class representatives were promised any  
18 incentive awards, it is within the Court's discretion. We  
19 note that we are requesting lower incentive awards in this  
20 case than we did in the wire harness case in which the Court  
21 awarded seven class representatives \$50,000 each because this  
22 case settled at an earlier stage than the wire harness case.

23              Having said that, the class representatives did  
24 substantial work on behalf of the class, and I would like to  
25 briefly highlight a few of the types of work that they have

1       done.

2                     Probably the most -- of most immediate importance  
3                     to counsel and the claim was that they educate us on occupant  
4                     safety systems. As the Court knows, those are made up of  
5                     seatbelts, steering wheels and air bags; not something we  
6                     knew a lot about before investigating this case, and the  
7                     class representatives were right in that industry, and they  
8                     knew a lot about those products and how they are procured  
9                     from the defendants and how they become part of systems that  
10                    are then sold to OEMs.

11                   So our three class members were all tier 1  
12                   suppliers to OEMs who bought directly from defendants. They  
13                   taught us about the technology, purchasing, and how it fits  
14                   into a system in the car.

15                   The class representatives have devoted significant  
16                   time and effort. There have been numerous meetings with  
17                   counsel, they have communicated with counsel extensively,  
18                   they've preserved electronic and hard copy documents, and  
19                   took steps to implement their preservation plans. They've  
20                   communicated with us to discuss collecting documents for  
21                   review and production to the defendants. They've worked on  
22                   questionnaires that we've given them. They've reviewed  
23                   pleadings such as the complaints, and they have kept abreast  
24                   with interest on the status of the litigation for many years.  
25                   Finally, they've reviewed the details of and conferred with

1       counsel regarding proposed -- well now approved settlements.

2                  In conclusion, Your Honor, direct purchaser  
3 plaintiff counsel respectfully ask the Court for the  
4 30-percent award after deducting expenses, also for  
5 reimbursement of the expenses, and for the incentive award of  
6 \$30,000 per class representative.

7                  Thank you, Your Honor.

8                  THE COURT: All right. Let me ask you this  
9 question, in terms of the costs, where are those costs? I've  
10 got any number of pages with very minor costs, so where's the  
11 explanation, is it in another book?

12                 MR. HANSEL: The costs are -- in the case of OSS,  
13 they are in Exhibit A. It's actually ECF Document Number  
14 164-1, there's an index of declarations from each of the 16  
15 law firms who are -- who constitute the plaintiffs' counsel,  
16 the DPP counsel in the OSS case, and for each firm there is a  
17 list of expenses.

18                 And in the air conditioning case --

19                 THE COURT: Where is that?

20                 MR. HANSEL: It's -- the document is 117-1, it's a  
21 similar document with all the different law firms who  
22 participated in the work and their respective expenses. The  
23 expenses are itemized.

24                 THE COURT: So it's the total of all of these  
25 individuals?

1                   MR. HANSEL: That's correct.

2                   THE COURT: Okay. Then I have looked at it.

3                   MR. HANSEL: Thank you.

4                   THE COURT: Thank you. All right. The Court has  
5 reviewed this matter, and I have reviewed the individual  
6 expenses, but I hadn't added them all up to that, but I  
7 understand what you are saying, and the Court does award the  
8 expenses as indicated. There were some phone expenses, I  
9 think, on one of those, I'm not quite sure if there are, but  
10 I want those deleted.

11                  MR. HANSEL: Delete phone expenses?

12                  THE COURT: Yes.

13                  MR. HANSEL: Yes, Your Honor.

14                  THE COURT: Phone, fax, copying, those are the ones  
15 I do not allow.

16                  MR. HANSEL: Okay.

17                  THE COURT: In terms of the awards for the -- the  
18 incentive awards for the named plaintiffs, the Court again  
19 relies on counsels' representation of what these individuals  
20 did, and how much time and effort was put into the named  
21 plaintiffs both in terms of educating plaintiffs' counsel, in  
22 terms of submitting the discovery, whether it be hard copy or  
23 electronic, and in cooperating with counsel in terms of  
24 resolving this litigation, and the Court will award the  
25 incentive, in this case it was asked for \$30,000 each, and

1       the Court will award that.

2                  In terms of the attorneys' fees, I think as you all  
3 know, the Court has grappled with attorneys' fees every time  
4 this has come up, but I have come to this resolution on these  
5 matters here with the direct purchasers. I want to stress  
6 the overall thing is that the Court believes the direct  
7 purchasers are well-informed, competent companies, and -- I  
8 guess they are all companies, there may be some individuals  
9 but they know what's going on, and they would understand what  
10 is requested here in terms of the attorneys' fees.

11                 I understand there was -- the multiplier was wrong  
12 in one of the notices by a very small figure.

13                 And the Court looks at the fee to see whether it  
14 meets the standard as required by our law. The Court notes  
15 that, as counsel has said, the percentage of fund approach  
16 has been used here regularly, and the Court prefers the  
17 percentage of fund method as opposed to the lodestar.

18                 The lodestar creates an interesting crosscheck, but  
19 the Court also recognizes that that crosscheck is only as  
20 accurate as the records are. And the Court notes that in  
21 records sometimes hours are expanded, not deliberately, I  
22 don't mean in any deceitful way, I just mean like if you get  
23 a telephone call or a memo, it is so much percentage, so many  
24 minutes allocated to it, and it might not take that time, and  
25 every single minute as I understand it is accounted for, but

1      the Court finds that that is just not a very accurate method  
2      of measuring what the compensation should be for the  
3      attorneys.

4            I think going into it we all know the standard is,  
5      as I see it in the Sixth Circuit, is somewhere between 20 and  
6      33 percent. I mean, obviously there, both ends have some  
7      impressions, but we know here that the Court appointed  
8      counsel after looking at their achievements, so to speak, to  
9      that -- to the point of the beginning of this case. And the  
10     Court is very pleased and impressed with counsel, and I think  
11     the complexity of this case shows that it takes competent  
12     counsel and it takes a lot of effort to earn this money. And  
13     the Court notes that it was taken on a contingency fee basis  
14     so that there's an opportunity to put in years of work with  
15     no final compensation.

16           Obviously there's complexity in this matter. There  
17     is -- it's just a tremendously complex matter involving  
18     tremendous organization in order to complete it.

19           I think given all of the factors and given the  
20     factors that you have a known set of plaintiffs who are  
21     educated, I'm assuming that many of them have their own  
22     counsel or hire outside counsel if they don't have inside  
23     counsel to review this, and therefore the Court will award  
24     the attorney fee of 30 percent after deduction of the  
25     expenses, the service cost -- the costs and service awards.

1       Okay.

2           MR. HANSEL: Thank you, Your Honor.

3           THE COURT: There is one other --

4           MR. HANSEL: Your Honor, if it is acceptable, we  
5 will submit a revised proposed order that backs out the  
6 faxes, copies and telephone calls.

7           THE COURT: Yes, they weren't a lot.

8           MR. HANSEL: We will back that out and get that to  
9 chambers as soon as possible.

10          THE COURT: And I would also like --

11          MR. HANSEL: Two orders, one in each case.

12          THE COURT: Yes. I would also like to indicate  
13 that you are asking for -- you are asking for you to be able  
14 to distribute the attorney fee amongst other attorneys  
15 working on this -- to allocate, I should say, the fee. I  
16 think I said that in the original order, and I don't think I  
17 need to say it again. It says you are appointed to do that  
18 in that appointment, it says allocation if I'm not -- I don't  
19 have the order here, but I think we said that exactly, so I  
20 don't want to do it again to stress it. I don't think we  
21 have had much trouble -- we had one instance in the  
22 beginning, but that is the order of the Court. Okay.

23           Anything else?

24           (No response.)

25          THE COURT: Do we have anything else on your

1      agenda, which I have also now lost? Now we have the auto  
2      dealers' motion, I have three of them.

3            MR. RAITER: You do, Your Honor.

4            THE COURT: Now these were set for later also, but  
5      nobody has objected; is that correct?

6            MR. RAITER: No one has objected, no one has  
7      indicated that they wish to appear, and no one has indicated  
8      that they intend to appear to counsel for the auto dealers.

9            THE COURT: All right.

10          MR. RAITER: Your Honor, I'm Shawn Raiter on behalf  
11      of the auto dealers.

12          You are correct, we have three motions before you  
13      today. The first is for the final approval of what we have  
14      called our Round 3 settlements. The second is for a set  
15      aside of potential service awards for our auto dealers. And  
16      the third is for attorneys' fees and cost reimbursement, and  
17      hopefully an award from the Court for those.

18          So I will start with the final approval motion.  
19          You've had two of those today already, you've had a number of  
20      them already before. They have been well briefed by all  
21      parties. You are completely familiar with the standard and  
22      the factors. I will hopefully address the facts that should  
23      be important to you rather than the law and the standards.

24          THE COURT: Okay.

25          MR. RAITER: So we have 23 defendant groups in the

1      Round 3 auto dealer settlements. There are 37 separate  
2      settlement classes within those settlements. The total  
3      amount is approximately \$115 million -- it actually exceeds  
4      \$115 million by about \$180,000.

5                As before, Your Honor, the settlements are lump  
6      sum, they are cash, there is no reversion. There is  
7      substantial cooperation for each defendant. Some of these  
8      defendants have agreed to injunctive relief for two years  
9      going forward, others have not. Some have agreed to kind of  
10     quasi injunctive relief. They don't agree to call it as  
11     such, but they agree not to participate in a certain conduct  
12     going forward.

13              THE COURT: Okay.

14              MR. RAITER: The total now recovered for auto  
15      dealers and presented to the Court for final approval is  
16      approximately \$299 million with this 115.

17              We made our Round 1 payments in April 2018 to  
18      approximately 3,400 dealerships that filed eligible claims.  
19      The only way -- when I say we've made the payments, remember  
20      we had these reserves on the allocation plans. So we've not  
21      issued the reserves on either Round 1 or Round 2, but we made  
22      approximately 85 percent distribution of Round 1 in April of  
23      2018.

24              We made the distribution of Round 2 last week, so  
25      Round 2 payments have been made; they have either been wired

1      or checks have been sent to approximately 4,700 eligible  
2      dealership claims.

3                THE COURT: What was their average -- is there an  
4      average?

5                MR. RAITER: Well, yeah, so here's the problem.  
6      Some of them file one claim for four dealership locations.  
7      Let's say, hypothetically, some of them file one claim for  
8      several hundred dealership locations; others may be a  
9      dealership group but they file dealer by dealer by dealer by  
10     dealer. So the question is a good one, and it is little bit  
11     hard to answer directly.

12               As we stated in the papers, some of the dealership  
13     groups have already received millions of dollars in payouts.  
14     The average, if there is such a thing, is approximately  
15     \$30,000 paid right now as of Round 1 and Round 2. This will  
16     obviously increase that roughly another 30 percent or so,  
17     maybe a little more. So again, it depends on if you are  
18     looking at rooftops, roofs, root claims, bundled claims, it  
19     is a little bit challenging, but most average-sized dealers  
20     are getting tens of thousands of dollars in each settlement  
21     round, and has thus far been quite happy.

22               As you can see, we had 3,400 claims filed in  
23     Round 2, we had 4,700 -- excuse me. In Round 1 we had 3,400,  
24     and 4,700 in Round 2, and there are new dealers filing claims  
25     in Round 3 as we speak because they realize, we think, these

1      are good settlements, and it is worth participating.

2                 So our claim deadline for Round 3 is January 19th,  
3    2019, so we will continue to take in new claims. There are  
4    people out there wrestling up more claims. There are these  
5    claim filing groups who have an incentive to go find  
6    dealerships to file claims on their behalf, which is a good  
7    thing; we want people to file claims and participate.

8                 The notice plan was carried out as Your Honor had  
9    ordered. It was disseminated to approximately 14,000  
10   dealership physical addresses, and this is a list that has  
11   evolved over time. The claim administrator gathered those  
12   from several different places of known new vehicle  
13   dealerships in the included states. Some of them might be  
14   out of the business; some of them were, in fact, out of  
15   business and still filed claims. Some of them have changed  
16   names. So you've got a list that's not precise, but it's  
17   pretty darn good because it's really known new car  
18   dealerships.

19                 They then sent e-mails to approximately 44,000  
20   e-mail addresses associated with new car dealerships over the  
21   same class periods, and then they advertised in all of the  
22   normal automobile dealership publications, Automotive News,  
23   Auto Dealer Monthly, and then also a very substantial online  
24   campaign as well, Twitter, Facebook and some others, along  
25   with press releases. We believe that the plan reached 90 to

1       95 percent of potential class members in the indirect  
2 purchaser states.

3                  We stated in our papers that all of the defendants  
4 had sent a timely CAFA notice. I was told today that one  
5 maybe did not send it as soon as we had hoped. And if you  
6 remember last time for the auto dealer settlements, we had a  
7 couple of CAFA notices that were late going out, and because  
8 of the CAFA requirement, that the notice did go to the state  
9 attorney generals and the district attorney generals,  
10 Puerto Rico and the District of Columbia, that you have to  
11 give time for them to respond before you can enter judgment.  
12 So I believe we are going to have one defendant that we will  
13 have to hold off on their final judgment. We did that last  
14 time with a handful. So I will have to revise our final  
15 approval order to address that just like we did last time,  
16 but we will communicate with the Court about the timing of  
17 that, and then also remind your chambers when it is time to  
18 enter judgment, assuming that you approve the settlement, of  
19 course.

20                  We submitted these to you like we did last time,  
21 which is with an omnibus final approval order, and then  
22 individual judgments for each settling defendant. Those  
23 judgments have been reviewed and approved by defense counsel.

24                  So what I think the process here would be is that  
25 if you agree with the settlement, approve the settlements, we

1     would issue the omnibus order and then the individual  
2     judgment for each defendant in each of their appropriate  
3     cases. Again, we did that in Round 2.

4                 The class member reaction was, again, good in our  
5     opinion; we had no objections. The opt-outs were essentially  
6     the same three dealership groups, as you know, has brought  
7     their own actions here or are pursuing their own actions.  
8     The out opts, what they have done is they opt out every  
9     dealership associated with those groups including many that  
10    are not in the included states or the indirect purchaser  
11    states.

12               So if you sort the list by the included or indirect  
13    purchaser states, there are roughly 290 addresses or  
14    dealerships listed. A good number of them say collision  
15    centers or hail repair or used cars, which would not be part  
16    of our settlement class unless they are a licensed new car  
17    dealership as well. They don't appear to be, so that number  
18    comes down a bit. Then they also have a lot of dealerships  
19    that are listed at the same physical address, so we're not  
20    sure if they are, in fact, different rooftops, different  
21    dealerships.

22               We think the total numbers of opt outs in Round 3  
23    in the included states is approximately 260 dealerships,  
24    which, if you crunch the math again using a denominator of  
25    potentially eligible dealerships of somewhere north of

1      14,000, we believe it is more like 16,000, your opt-out  
2      percentage is between 1 and 2 percent. Again, those are the  
3      same dealerships that opted out of Round 2. Many of them  
4      filed claims in Round 1 but then elected to participate on  
5      their own thereafter.

6            We had a very engaged campaign with them to try to  
7      persuade them to stay in the classes because we thought the  
8      benefits were good and that they would come out ahead by  
9      doing this rather than pursuing claims with their own  
10     lawyers. They chose not to.

11           We didn't have any requests to appear. We didn't  
12     have any requests for additional information other than claim  
13     handling or claim filing information where people asked how  
14     do I file a claim or how do I get a claim, how do I do  
15     things? We directed those to the claim administrator  
16     primarily, but we didn't have anybody saying I don't  
17     understand your notice, I don't understand the settlement  
18     terms, I don't understand what's being offered, I don't  
19     understand anything that I need help with. So we didn't have  
20     a lot of reaction.

21           THE COURT: What do you think these opt outs, it's  
22     kind interesting for the dealerships, do you think they are  
23     going to file their own claims or they didn't want to be  
24     bothered or --

25           MR. RAITER: They think they can make more money,

1      and they have been told that by lawyers who are going to work  
2      on a contingent basis to try to get them more money. That's  
3      the reality. We, having weathered the discovery that we  
4      weathered in that case, we don't know how that makes any  
5      sense, or how that would work out.

6                When you really look at the settlements here,  
7      there's a lot of value to an MDL because the defendants have  
8      an incentive kind of to settle in these waves and be done and  
9      be over and really have this whole part of this litigation  
10     behind them, and we think that that really improves the  
11     settlement prospects in the MDL rather than going on your  
12     own.

13               But we had discussions with them, with the  
14     dealerships. We talked with them about the reality of what  
15     they are facing, the reality of what this kind of case would  
16     look like if they were to litigate it for -- and I put this  
17     in quotes -- only 260 dealerships, and we don't think the  
18     economics make sense, but they have been told or persuaded  
19     that they do or that they might, so that's what's happening.

20               Sometimes logic is not something you can understand  
21     when coming from someone else, so --

22               THE COURT: Do these 260 have the same attorney or  
23     are we talking about different --

24               MR. RAITER: Yeah, they do. They have essentially  
25     a group of two or three law firms, and they -- it was Group 1

1      Automotive Asbury, and then another dealership group who  
2      objected through their own essentially in-house lawyer, and  
3      then they are all being represented to our understanding by  
4      two or three law firms who believe that they can do better.

5                There is a cottage industry here in antitrust and  
6      securities cases in particular of opting out individual  
7      plaintiffs hoping to do better, so you have the non-class  
8      action lawyers who obviously don't have the opportunity to  
9      participate here because you have appointed counsel and  
10     therefore they don't have an opportunity to earn a fee here.  
11     So they try to opt people out and they litigate elsewhere.  
12     And I'm not casting any aspersions on whether that's a good  
13     or bad thing, that's just what has happened.

14               So the reaction though if you look at our  
15     settlements is quite good. No objections, and this is our  
16     third round of no objections. The first round we had no opt  
17     outs, and then Round 2 and 3 we have essentially the same  
18     groups opting out, and group three they have added some  
19     additional dealership locations that may or may not have been  
20     part of their Round 2 opt out. Again, our data isn't great  
21     because we don't exactly know -- we get a list from them, a  
22     letter which has been attached to the notice providers'  
23     declaration, telling us here is who is going out. Some of  
24     them may have filed a claim in Round 1, some of them may have  
25     been bundled in other claims, but what we know is in Round 3

1       they have expressly asked not to participate.

2           THE COURT: Okay.

3           MR RAITER: So as you have noted already about the  
4 other plaintiffs' groups here, these dealerships are often  
5 represented by their own in-house lawyers. They undoubtedly  
6 have outside counsel even if they don't have their own  
7 in-house lawyers, and so some of them are publicly traded  
8 companies who remain in the litigation. So when we look at  
9 the value of the settlement, the benefits, whether they are  
10 reasonable, fair and adequate, we think that really speaks  
11 loudly to the quality of these settlements; that we don't  
12 have sophisticated businesses who are really willing to try  
13 to make a dollar with their own in-house lawyers and their  
14 own outside lawyers looking at these and not objecting and  
15 electing instead to participate, and we think that speaks  
16 very loudly about the quality of these settlements.

17           We've went -- we've gone through the factors  
18 before; again, cash benefits, lump sums, no reversion,  
19 substantial cooperation from each of the settling defendants.  
20 Some of these were settlements that were either icebreakers  
21 for certain parts or the second or so settling defendants  
22 that are still early in some of these parts cases, although  
23 we are getting close to being done, which I know Your Honor  
24 will be happy about.

25           I have mentioned how the orders are presented. And

1      unless you have questions about the factors or anything else  
2      about the facts of the final approval motion, I will allow  
3      Your Honor to speak.

4                 THE COURT: Okay. Thank you.

5                 All right. The Court has reviewed this matter.  
6      You certainly have gone over the factual basis for these  
7      settlements with these -- what did it involve, 25 component  
8      parts, I think, or 24?

9                 MR. RAITER: It's 23.

10                THE COURT: 23. And the Court will just very  
11      quickly review what I have done today in several other cases  
12      with the factors here that need to be looked at to see  
13      whether this settlement is also fair, reasonable and  
14      adequate.

15                The Court, as you indicated before, notes that the  
16      likelihood of success is certainly not guaranteed in these  
17      matters, and it could be that these classes would litigate  
18      this for a long time and receive no compensation.

19                The litigation is extremely complex, it takes a lot  
20      of time, and it is very expensive to deal with. But we do  
21      have experienced counsel in this matter that the Court gives  
22      great deference to, and the Court finds that counsel has done  
23      significant discovery in this case and analysis with the  
24      facts, and that it negotiated -- counsel negotiated a  
25      settlement at arm's length.

1           We know that none of the class members have  
2 objected to the settlement. And the Court does want to -- I  
3 note this in the notice, but I want to notice it here, and,  
4 Mr. Raiter, you referenced it, that these plaintiffs are  
5 sophisticated plaintiffs with counsel -- maybe not themselves  
6 but sophisticated enough to have counsel, either in-house or  
7 retained, to advise them in these -- in the resolution of  
8 this matter. So I would think that they would understand,  
9 and with counsels' advice there have still been no  
10 objections.

11           There have been opt outs -- there's a group of opt  
12 outs, perhaps more than in any of our other settlements, but  
13 not necessarily a great percentage. It is not a great  
14 percentage; as you indicated, it's 1 to 2 percent of the  
15 potential dealerships.

16           So the Court finds that also the public would be  
17 interested in settling this complex litigation that the Court  
18 finds was fair, reasonable and adequate.

19           The question next is whether the notice was proper,  
20 and we know that here the notice was believed to have -- I  
21 think you indicated or the papers indicated somewhere about a  
22 90 percent reach to the potential claimants, and the Court  
23 finds that that is sufficient.

24           The settlement class should be certified because it  
25 satisfies all of Rule 23(a)(1) factors; that is there's

1        numerosity in that there is approximately 14,000 or, I  
2 believe, 16,000 prospective automotive dealerships, that  
3 there is commonality of questions of law or facts common to  
4 the class. There is typicality of the represented parties,  
5 the claims are typical of the class. There is adequacy of  
6 representation, as the Court has already gone into. And  
7 there's the common question in these antitrust cases that  
8 predominates over any individual question.

9           So the Court does certify the class, and it  
10 appoints class counsel, the same class counsel that was  
11 appointed sometime ago, that is Cuneo, Gilbert & LaDuca,  
12 Barrett Law Group and Larson King, LLP, as the settlement  
13 counsel. Okay.

14           MR. RAITER: Thank you, Your Honor.

15           The next motion I think should be quick. We have  
16 filed a motion to obtain leave from the Court to set aside  
17 1 percent of these settlements that are before the Court for  
18 potential future service awards for the dealerships.

19           THE COURT: Okay. I'm not ruling on whether they  
20 are entitled to service awards now but simply the set aside,  
21 and I think that it is appropriate to do the set aside at  
22 this point, and then we will deal with the actual findings  
23 later.

24           MR. RAITER: Exactly, Your Honor. The thinking  
25 behind this, just so you know, and we did this in Round 2 as

1 well, but the thinking is these dealerships that have served  
2 as representatives have done so across all rounds, and we  
3 didn't think it would be fair to fund any service awards from  
4 only one settlement group or the other. So we thought we  
5 need to set that aside, and if we were to come back and ask  
6 for additional awards, you could tell us how we would  
7 allocate it, or we could make a suggestion about how to  
8 allocate across the rounds of settlements.

9 THE COURT: Okay.

10 MR. RAITER: So it is simply a set aside. We  
11 noticed it in the notice to the class, and told them we would  
12 ask for a 1 percent set aside, and, again, no one commented  
13 or objected on that request.

14 THE COURT: Thank you. The 1 percent may be set  
15 aside. Then we have a motion for attorneys' fees?

16 MR. RAITER: Yes, Your Honor. So the attorneys'  
17 fees, the fun part. We again will not go through the factors  
18 other than to note a few that we think are important facts  
19 about our circumstances in this litigation and the results  
20 that we have obtained.

21 As you know, we have made a request for  
22 reimbursement of past expenses for only those cases in  
23 Round 3 in which the Court did not already approve a  
24 litigation fund. In other words, these would be the new  
25 parts for which there was no money set aside and that counsel

1 therefore funded these costs until this time. The request  
2 there is for \$358,125.09.

3 We heard Your Honor very clearly today about  
4 postage and long distance, and the Exhibit A to Marie Thomas'  
5 declaration you will see did not make a request for those  
6 things in this round of settlements. We understand you loud  
7 and clear going forward, and will be sure we don't do that in  
8 the future. So I hope those costs and expenses you will find  
9 to be appropriate and reimbursable.

10 Primarily what we have right now in this stage of  
11 the litigation, we have document hosting. We continue to  
12 have expert costs for potential certification and damage  
13 issues with certain of the defendants that have not settled.  
14 We have a substantial amount of mediation expense and travel  
15 related to mediation and settlement discussions, which  
16 obviously have borne some fruit. And so that's really what  
17 you are seeing here now is more kind of hosting, potential  
18 preparation for certification, and settlement-related  
19 matters. So we would request reimbursement of \$358,125.09 as  
20 costs that were not reimbursed from a prior settlement fund.

21 THE COURT: I will allow those costs less the ones  
22 that I have stricken in the other cases.

23 MR. RAITER: Yes, and that request doesn't include  
24 any of those.

25 THE COURT: Okay.

1           MR. RAITER: So I think we are good there.

2           We had again noticed this. We had only asked -- I  
3           think in the notice we asked for costs and expenses, and we  
4           also then noticed to the class members a request for a  
5           set-aside of future litigation expense fund money for, again,  
6           these cases involved in Round 3 settlements. We've taken  
7           care to establish independent funds, as you have allowed  
8           these future litigation expenses to be sure that those  
9           expenses are only spent in cases involved in those  
10           settlements. Again, it wouldn't be fair in our mind or make  
11           sense to have one group of settlements pay for litigation  
12           expenses that were not the same parts or not included in  
13           there. So we've asked for a set aside here going forward of  
14           3 percent of the settlement funds. We again provided notice  
15           to the class of that in the notices. There were no  
16           objections, no responses to that request.

17           You previously awarded 8 percent in Round 2. Here  
18           we are only asking for 3. We see our expenses declining, and  
19           we just need to be sure though that if we are going to go to  
20           class certification or trial with someone that we have funds  
21           set aside to do that from these settlements. Again, it is a  
22           fairness issue that these settlements bare their own share of  
23           what may be needed to go forward.

24           THE COURT: I will grant that. I have no problem  
25           with the set-aside, and we can deal with what they are spent

1 for later.

2 MR. RAITER: And as we have talked about, to the  
3 extent those funds are not spent, they will revert back to  
4 the settlement class fund.

5 THE COURT: Right.

6 MR. RAITER: So the attorneys' fees. We, again,  
7 have asked for 30 percent of the settlement funds after  
8 deduction of notice expenses, costs including the future  
9 litigation expense that you just mentioned, which is roughly  
10 \$3.4 million, so we are asking for 30 percent of the -- it is  
11 roughly 112,000 -- excuse me, 112,087,000, 30 percent of  
12 that. That translates to 29 percent of the gross settlement  
13 funds at issue here roughly, just over 29 percent. We  
14 noticed again to the class that we would ask for 30 percent  
15 of the settlement funds, so what is actually being asked for  
16 is less than the notice said.

17 Your Honor has seen the case law, and there's  
18 plenty of case law that allows 33 and half percent or less.

19 I understand -- we have watched the hearing today.  
20 I would like to make the point for our 30 percent as well. I  
21 understand that you have -- if we look at the orders that you  
22 have issued on fees, you ordered more and you have ordered  
23 less, and we think 30 percent is appropriate here for these  
24 settlements, and here's why.

25 Our goal in this, in our opinion as counsel for the

1 auto dealers, was to get money recovered for THE auto  
2 dealerships and to get money in their hands as quickly as  
3 possible, and we've done that in Round 1 and Round 2. We  
4 expect to do it in Round 3 in pretty short order, and that's  
5 a relative term, following the conclusion of the claim  
6 process. That, as you know, requires us to go through a  
7 deficiency process. Somebody files a claim that is  
8 deficient, so the claim administrator says we need more  
9 information, they give them warnings, and that takes months.  
10 But ultimately what we have now in place is a system that is  
11 very, very complicated with a number of defendants and a  
12 number of parts, the class periods, the money involved and  
13 the number of claimants. It is an incredibly complex claim  
14 calculation in order to calculate and tell everybody what  
15 they are getting on a parts or vehicle basis, but we have  
16 that in place, and we expect for Round 3 that we are going to  
17 be able to do that sometime in 2019. Again, the claim  
18 process closes end of January.

19 We have been at -- really, you've heard us say  
20 this, and you can assess our emotion in doing it or what we  
21 were thinking, but we were at ground zero of the discovery  
22 process for both the end payors' damages analysis and their  
23 class certification analysis and the auto dealers because of  
24 where we sit in the distribution chain. The defendants were  
25 very focused on us; what are your damages, what are your

1      pass-ons, how can you certify a class? All of what we did  
2      there affects the end payors in a case like this. So we were  
3      the target of a ton of discovery that others in this  
4      litigation didn't face, a ton of stress, a ton of work.

5                And then we also did the same things that the other  
6      groups have done as well; reviewed documents, filed motions,  
7      opposed motions, appeared, done all of these other things.

8                So if you look at the settlements for the end  
9      payors, they are roughly three times larger than ours, and  
10     the fee award that you issued recently to the end payors, I  
11     believe was around \$108 million 175, and that alone is more  
12     than the first two rounds of fees to the auto dealers and  
13     what we are requesting here substantially. And the lodestar  
14     multiplier for the end payors, for example, after that award  
15     was 1.62.

16               If you award 30 percent to the auto dealers today,  
17     our multiplier will be 1.09. And I appreciate the Court's  
18     decreasing reliance on lodestar and multiplier, but that  
19     shows you we did a lot of work to get to where we are at with  
20     these settlements. And we think the value of what we  
21     provided to us and to the other plaintiff groups in this  
22     litigation, the value of what we provided to our class  
23     members by getting them the money soon, I'm not sure if  
24     anybody else has distributed yet, I believe the directs may  
25     have, but our focus has been to get this litigation done, to

1       get it done well for the dealerships.

2                 It's a very unique litigation for the dealerships.  
3       If you look at indirect purchaser litigations, to find a  
4       level of success for intermediate indirect purchasers, like  
5       we have had here for the auto dealers, is very difficult to  
6       do. I could argue with you that you won't find another case  
7       where intermediate level indirect purchasers have done as  
8       well as the auto dealers here have.

9                 So, Your Honor, I believe that we are well within  
10      reason and are certainly within the case law to request  
11      30 percent of the settlement funds after the deduction of the  
12      future litigation costs, past litigation costs, and the cost  
13      of notice and administration of this round of settlement.

14      Thank you.

15                 THE COURT: And the --

16                 MR. RAITER: I should make one more point.

17                 THE COURT: And the setoff for the named plaintiffs  
18      here, the incentive awards?

19                 MR. RAITER: Correct. I'm sorry. One last point  
20      as well. And this isn't lost on you, I know you have talked  
21      about the risk, but the firms involved in this litigation,  
22      some of them are larger, have more lawyers and more  
23      resources; some of them are smaller and by participating in a  
24      litigation like this they really take a great risk of the  
25      financial well-being of their law firm. Now, you sure hope

1      it pays off and you sure hope you do well, but it is very  
2      true that there are certain of the firms in our group who  
3      really put the financial well-being of their law firms on the  
4      line when they started in this litigation with no guarantee  
5      of being paid.

6                  Thank you.

7                  THE COURT: Thank you. All right. The Court does  
8      prefer the percentage of the fund versus the lodestar, and I  
9      won't go into why, I have done it several times today, but  
10     considering the percentage of the fund, the Court has to  
11     review the factors.

12                There are six factors to be considered. There is  
13     the value of the benefit rendered, and that is great. There  
14     is the -- society is served well by these settlements. And  
15     the Court -- excuse me one minute. It is important to reward  
16     the attorneys who produce such benefits to maintain -- to  
17     award them appropriately and to maintain an incentive to  
18     others. The services were undertaken on a contingency fee  
19     basis, and as counsel indicates in this case, certainly true  
20     as you indicated for some of these attorneys, but I think  
21     overall this -- there is always the chance that there is no  
22     recovery on a case as major as this. It certainly is complex  
23     litigation, and it involves great skill of the attorneys and  
24     standing of counsel, really on both sides to litigate.

25                So I affirm everything that you said that you have

1 done in this, Counsel. And when I look at the lodestar,  
2 which the Court uses as a crosscheck, of 1.09, it is  
3 certainly within the realm of lodestar and lodestars  
4 approved in the Sixth Circuit.

5 The Court also notes, as I said before, this is  
6 important to me that you are dealing with auto dealers who  
7 had notice of exactly what you are seeking for compensation  
8 in this matter, and they have access to legal advice, and  
9 there has been no objection to the attorney fee as set forth,  
10 so the Court does award the 30 percent after the deductions  
11 that we have specified here in court. All right. Thank you.

12 MR. RAITER: Thank you, Your Honor.

13 THE COURT: Anything else?

14 || (No response.)

15 THE COURT: You have been very quiet, Mr. Cuneo.

16 MR. CUNEO: I'm happy to say hello to Your Honor.

17 THE COURT: Hello.

18 MR. CUNEO: We never argue into a yes answer.

19 THE COURT: Anything else? Any of the defendants?

20 || (No response.)

THE COURT: Okay. Thank you very much. We will  
see you next year. Happy holidays.

23 (Proceedings concluded at 12:56 p.m.)

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2 *CERTIFICATION*

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4 I, Robert L. Smith, Official Court Reporter of  
5 the United States District Court, Eastern District of  
6 Michigan, do hereby certify that the foregoing pages comprise  
7 a full, true and correct transcript taken in the matter of In  
8 Re: Automotive Parts Antitrust Litigation, Case No. 12-02311,  
9 on Wednesday, September 26, 2018.

10

11

*s/Robert L. Smith*  
12 Robert L. Smith, CSR 5098  
Federal Official Court Reporter  
United States District Court  
13 Eastern District of Michigan

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16 Date: 10/10/2018

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Detroit, Michigan

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